Office-Supreme Court, U.S.
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No. 84-1076

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Appellant,

v.

THE STATE OIL AND GAS BOARD OF MISSISSIPPI and
COASTAL EXPLORATION, INC., *et al.*,
Appellees.

On Appeal from the Supreme Court of Mississippi

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED JANUARY 2, 1985
JURISDICTION NOTED MARCH 25, 1985

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Significant events in the proceedings

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Date—Event—Record Page

7/29/82—Petition of Coastal Exploration Inc. filed in the State Oil and Gas Board of Miss.—19-26.

9/14-16/82—Hearing on the Petition of Coastal Exploration Inc. by State Oil and Gas Board of Miss.—88-527.

10/13/82—Entry of Order No. 409-82 by the State Oil and Gas Board of Miss.—533-42 App. C to Juris. State.

10/15/82—Petition to appeal filed by Transcontinental Gas Pipe Line Corp. in the Circuit Court of the First Judicial District of Mississippi.—546-7.

6/29/83—Entry of Memorandum Opinion and Order of the Circuit Court of the First Judicial District of Hinds County, MS—698-739 App. B to Juris. State.

7/7/83—Petition for appeal to the Mississippi Supreme Court filed by Transcontinental Gas Pipe Line Corporation—741-2.

9/5/84—Entry of Order and Opinion of the Mississippi Supreme Court affirming in part, reversing and rendering in part, and remanding to the Circuit Court with directions.—App. A and E to Juris. State.

9/24/84—Motion for Rehearing filed by Coastal Exploration, Inc.—

10/3/84—Entry of Order denying Motion for rehearing.—App. D. to Juris. State.

11/30/84—Notice of Appeal to the United States Supreme Court filed by Transcontinental Gas Pipe Line Corporation.—App. F to Juris. State.

1/2/85—Jurisdictional Statement docketed in the United States Supreme Court.—

3/25/85—Probable jurisdiction noted.—

Excerpts from testimony of Wilbur H. Knight

[96]

WILBUR H. KNIGHT

Having been duly sworn by the Chairman, gave the following testimony:

DIRECT EXAMINATION

BY MR. TAYLOR

Q. Will you state your name, please, sir? A. I am Wilbur H. Knight.

Q. Mr. Knight, where do you live? A. I live in Jackson, Mississippi.

Q. What is your occupation? A. I'm a consulting petroleum geologist.

Q. Have you previously appeared to testify before this Board as a consulting petroleum geologist? A. I have.

Q. Were your qualifications accepted at that time? A. They were.

BY MR. TAYLOR.

Mr. Chairman, we tender the witness as an expert in petroleum geology.

BY CHAIRMAN FANCHER:

Let the record show the qualifications of Mr. Knight are accepted by the Board.

Q. (Mr. Taylor) Mr. Knight, I believe you are familiar with the petition which has been filed in this docket [97] by Coastal Exploration, Inc. A. I am.

Q. And it seeks to require Transcontinental Gas Pipe Line Company to take ratably from Coastal Exploration,

Inc. insofar as its interest is concerned in wells producing from the Harper Sand Gas Pool in Greens Creek and Morgantown Fields. A. That's correct.

Q. And you have read the petition and are familiar with it? A. I am.

Q. Have you undertaken a study of the Harper Sand Gas Pool as it underlays portions of Greens Creek and Morgantown Field in Jefferson Davis and Marion Counties, Mississippi? A. I have.

Q. And have you prepared and brought with you exhibits which will assist you in your testimony? A. I have.

Q. Would you identify your first exhibit, please, sir? A. Exhibit 1 is a structure map on top of the Harper Gas Sand.

Q. Was it prepared by you or under your supervision? A. It was prepared by me.

Q. Is it correct and accurate? A. It is.

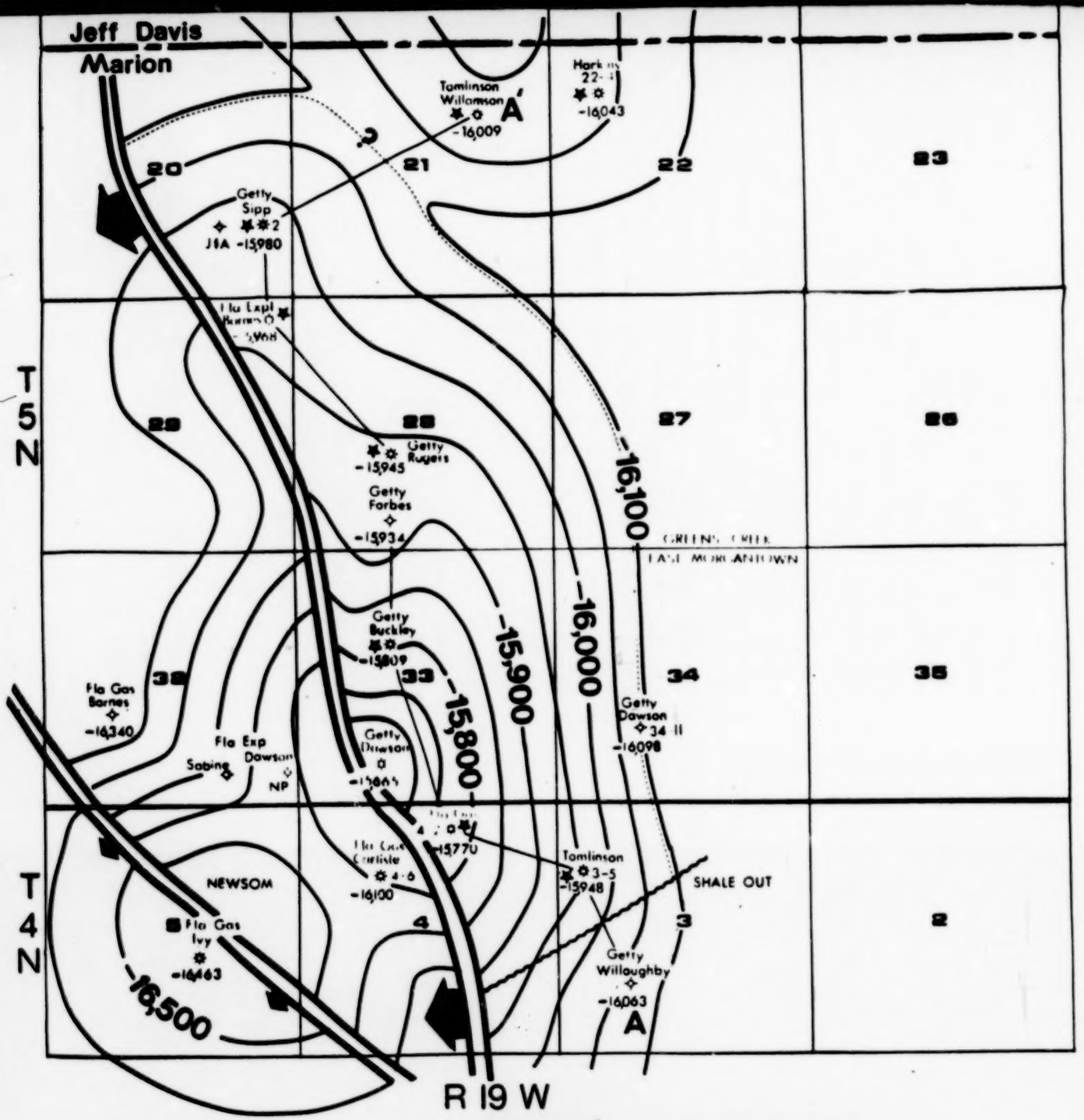
[98] BY MR. TAYLOR:

Mr. Chairman, we would offer as Exhibit 1 the structure map on the Harper Sand prepared by Mr. Knight.

BY CHAIRMAN FANCHER:

All right, let it be marked.

(THE STRUCTURE MAP WAS MARKED AS EXHIBIT 1 TO THE TESTIMONY OF MR. KNIGHT AND APPEARS AS FOLLOWS:)



Parts of

NEWSOM, E. MORGANTOWN & GREENS CREEK FIELD

JEFF DAVIS & MARION COS., MISS.

Structure - Top Harper Gas Sd.

SCALE 2,000 4,000 6,000 FT

Docket No. 287-82-418 & 467
Exhibit No. 1
Wilbur H. Knight

for Julius Ridgway

Aug. 1982

[100] Mr. Knight, would you explain your Exhibit 1, please sir? A. Yes. This is a map drawn on a scale of one inch equals 2,000 feet of the southern part of the Greens Creek Field and the northern part of the East Morgantown Field. The structure contours are drawn on the top of the reservoir, 50 foot intervals. The wells producing from the Harper Gas Sand Pool are identified by the stars. The wells in which Coastal has a particular interest are those wells that are identified by a pink circle. This map shows that the reservoir is basically closure against a fault, which is downthrown to the west, and there is some question indicated by my question mark whether or not the Harper Gas Pool is continuous across a low relief structural saddle and continues on up into Greens Creek proper, which would be off the map to the north.

Q. That's the—the part that is behind your question mark between the Thomlinson-Williamson Well and the Getty-Sipp Well? A. That is correct. The yellow line outlines the boundaries of the Harper Gas Pool if you restrict it across the line in Section 21. My next exhibit will demonstrate that a little more clearly—the uncertainty of that separation in that area.

Q. Mr. Knight, I believe you have identified six wells producing from this common pool, is that correct? [101] A. Well, there is more than six I have identified. If you include the wells in 21 and 22—if you exclude them, then there are six wells in the pool, yes.

Q. That would be the Getty-Sipp, the Florida-Barnes, the Getty-Rogers, the Getty-Buckley, the Florida-Carlisle Number 2, and the Tomlinson-Willoughby. A. 3-5, that's correct.

Q. Do you have a second exhibit that you brought with you today? A. Yes.

Q. Would you identify this exhibit, please? A. Yes. This is a cross section along the orange line drawn on the map, which is identified as A-A Prime, with A-Prime being to the north and A being to the south.

Q. Was this cross section prepared by you? A. It was.

Q. Is it accurate? A. Yes.

BY MR. TAYLOR:

Mr. Chairman, we offer into evidence as Exhibit 2 the cross section prepared by Mr. Knight.

BY CHAIRMAN FANCHER:

All right, let it be marked and received in evidence.

• • • • • • • • • • •

[103] Q. Would you explain Exhibit 2, please, sir? A. Yes, Exhibit 2 shows the pertinent part of the electric logs of the eight wells on the cross section. The cross section is a structured cross section showing the comparative subsea depth of the pool in all of the wells, and also, by means of the yellow coloring I have indicated the very readily correlatable Harper Sand from well to well across the entire section until you get to the right-hand well, which is the Getty-Willoughby 3-11, where the Harper Sand is shaled out and there is a upper Harper Sand that I have identified as a stray sand, which is nonproductive and not a part of the reservoir.

Again, I call your attention to the area between the two left-most wells where I have the little question mark, and there is some question whether or not the Harper Sand dips below the gas/water contact at approximately minus 16,100 feet and separates it from Greens Creek proper. There is evidence indicating that it could extend and be part of the Greens Creek proper Harper Gas Pool. But in any event, there is absolutely no question whatsoever that

the three wells, which I have underscored in pink, are in the same reservoir as the wells between them. Those six wells are producing from a common pool in the intervals shown by the heavy blocks, which are the perforated intervals in each well.

Q. Mr. Knight, have you prepared and brought with [104] you an exhibit which would reflect the productive history of the six wells which you have testified are producing from a common pool? A Yes, I have.

Q. Would you identify what you have handed me, please, sir? A. This exhibit is entitled Gas Production from Selected Wells Producing from the Harper Gas Pool, Greens Creek and East Morgantown Field, Jefferson Davis and Marion County, Mississippi.

Q. Did you prepare this exhibit? A. I did.

Q. Was it prepared from the official records of the State Oil and Gas Board? A. It was.

BY MR. TAYLOR:

The Chairman, we would offer into evidence as Exhibit 3 the past production history prepared by Mr. Knight.

BY CHAIRMAN FANCHER:

All right, sir, it will be received.

(THE PRODUCTION HISTORY WAS MARKED AS EXHIBIT 3 TO THE TESTIMONY OF MR. KNIGHT AND APPEARS AS FOLLOWS:)

Exhibit 3

GAS PRODUCTION FROM SELECTED WELLS PRODUCING FROM THE HARPER GAS POOL, GREENS CREEK AND EAST MORGANTOWN FIELDS, JEFFERSON DAVIS AND MARION COUNTIES, MISSISSIPPI

YEAR/MO.	GETTY— #2 SIPP 20-9	FLA. EXPL.— #1 BARNES	GETTY— ROGERS 28-11	GETTY— BUCKLEY 33-6	FLA. EXPL.— CARLISLE 4-2	TOMLINSON WILLOUGHBY
April	0	0	86,262	88,227	0	0
May	0	0	184,120	199,572	0	0
June	0	0	193,521	182,550	0	0
July	0	0	209,978	154,546	0	0
August	0	0	215,712	105,314	0	0
September	0	0	214,808	98,012	0	0
October	11,985	0	219,782	87,147	0	0
November	115,171	0	228,329	69,356	0	0
December	108,340	0	242,225	70,445	0	0

1982

January	81,389	0	236,094	69,625	0	0
February	76,900	0	220,415	59,241	0	0
March	75,962	0	245,884	62,441	0	0
April	70,050	0	226,372	76,546	70,323	41,748
May	74,240	0	228,458	194,425	144,120	116,534
June	63,557	0	221,384	193,647	132,677	125,528
		1st Prod. 7-2-82				
TOTALS	677-594 MCF	0	3,173,344 MCF	1,711,094 MCF	347,120 MCF	283,810 MCF

(Information obtained from Mississippi State Oil and Gas Board Form No. 9)

WILBUR H. KNIGHT
August, 1982

[106] Q. (Mr. Taylor) Mr. Knight, I believe your Exhibit 3 shows that the date of the first production from the Getty-Rogers Wells occurred in April of 1981? A. That's correct.

Q. And the next of the three wells that you have underscored on your Exhibit 2, the Getty-Sipp Well, began producing in October of 1981? A. That's correct.

Q. And then the Tomlinson-Willoughby Well began producing in April 1982? A. That's correct.

Q. Mr. Knight, would you describe the Harper Sand Gas Pool as you have depicted on your Exhibits 1 and 2 as a gas condensate reservoir? A. Well, it's a gas reservoir that produces condensate due to the reduction in temperature and pressure. So, it's a gas condensate reservoir in that sense, yes.

Q. Have you studied any other gas reservoirs producing condensate within the state of Mississippi? A. I have studied all of them, I believe, to some degree.

Q. Well, can you give the Board some idea as to how many you have studied? A. Different reservoirs? Oh, I would say probably 100, or more.

[107] Q. Including reservoirs within what we call the Hosston trend in south Mississippi? A. That's correct.

Q. Have you become familiar, generally, with the drainage patterns in gas condensate reservoirs of the type depicted on your Exhibits 1 and 2? A. I have.

Q. Do you have an opinion whether the six wells that you have depicted on your Exhibit 2, your cross section, whether they are competing with one another in the common pool? A. They are.

Q. In your opinion what well, or wells, in the common pool are most directly in competition with, for example, the Getty-Sipp Well? A. Well, the Florida Gas-Barnes

would be the—to answer your question in a general way, usually the geographic nearest well is the one that offers the most competition in drainage.

Q. It's a relationship of well bores? A. That's right.

Q. And what about the well that is in most direct competition with the Getty-Rogers Well? A. It would be the Florida Gas-Barnes and the Getty-Buckley.

Q. And what well would be in most direct competition [108] with the Tomlinson-Willoughby Well in the south part of the pool? A. The Florida Gas-Carlisle 4-2 Well.

Q. If the wells in the common pool are not producing ratably, would drainage occur between the developed units? A. It would.

Q. In your business have you ever been called upon to make estimates of reservoir reserves—reserves of recoverable gas and condensate? A. Many times, I have.

Q. Can you give the Board some idea of how many times you have done this? A. Well, I perhaps have made in the past 20 years several hundred separate reserve studies of different reservoirs.

Q. Would this include an area of what I have referred to as the Hosston trend? A. A substantial number of those reserve studies would be in the Hosston trend.

Q. Generally, what has been your experience in the accuracy of reserve estimates? A. Well, they become more and more accurate as you get more and more production history and more and more development.

Q. And as you get more and more production history, the reservoir is depleted? [109] A. That's correct.

Q. Taking into consideration your background in making reserve estimates and your study of the Harper Gas Sand Pool depicted on your Exhibit 1 and 2, assuming that Coastal Exploration's share of the gas in the Harper Gas

Sand Pool was to be banked or left in the ground and not produced at this time, can you give the Board some idea of the geological and reservoir risks that would occur to Coastal's opportunity to recover its share of gas from the pool? A. Well, as production proceeds in any reservoir, more especially this reservoir, the more reserves that have been produced, the less likelihood that there is a certainty that any reserves left in the ground would be there at the tail end of production when they theoretically would be recovered. So, as each day goes by the risk increases that gas left in the ground might not be there at some future time when it would be produced and this could happen for several different reasons. One, you could have some sort of calamitous occurrence to the well, casing collapse, or a premature water encroachment due to a break down in the cement job, and the delay or perhaps the unwillingness of the operator to repair the damage or attempt to repair the damage. Also, you can, at times your reservoir estimates are not ever 100 percent accurate. What you thought would be the life of the well might turn out to be somewhat shorter than estimates [110] indicated, and if that was the case, of course, the reserves wouldn't be there at the late hour in the productive life of the reservoir. So, there's many reasons why estimates of reserves we make today might prove inaccurate as the production from the reservoir continues. So that it's perfectly obvious that the longer you wait to produce gas that you leave in the ground, the more uncertain you are in your ability to recover that gas.

Q. It's because the reserves are depleting and the pressure is declining? A. That's true.

Q. I believe your Exhibit 3 reflects that all six of these wells producing from the common pool are now, in fact, producing gas. A. Oh, yes. I might add to that, the one figure that was not available when I typed this exhibit, but I did check the July production of all of these wells and the five wells were essentially the same as shown in the preced-

ing month; however, the Florida Gas-Barnes Well produced 159 million cubic feet during the month of July 1982. So, it's an excellent well.

Q. You testified a few minutes ago about the unratable withdrawals from the wells. In your opinion will waste occur if there are unratable withdrawals of these six wells completed in the common pool? [111] A. Well, as long as a well is capable and they are produced disproportionately, there will be waste occurring, actually net drainage to the higher wells. That's perfectly obvious. Now, if a well is incapable of producing the maximum out, that's another story. If it's not capable, it just can't do it under any circumstances. But if there is artificial controls on the rate and they are not equal, as long as a well is capable of competing with the others, why then, definitely there is waste being committed in the sense that the drainage is disproportionate.

Q. In your opinion if there were unratable withdrawals of gas from the six wells completed in this common pool, would the coequal and correlative rights of the owners in the pool be protected? A. Yes, in a fundamental and basic way. They would not be protected if the rates were not uniform. If they were not uniform and the wells were capable of uniform production, their coequal and correlative rights would not be protected.

Q. That would be all the more the case where if someone's gas in the parlance of the industry was left in the ground? A. That's true.

BY MR. TAYLOR:

Mr. Chairman, that's all the questions we have of this witness.

BY CHAIRMAN FANCHER:

All right, Mr. Stewart or Mr. Grower, cross examination?

[112] CROSS EXAMINATION

BY MR. STEWART:

Q. Mr. Knight, you have indicated that you have got a separate pool by your geologic exhibit. Has this pool been defined in the records of the State Oil and Gas Board? A. Yes, it's been defined and I have those definitions here. It's been defined twice. It's been defined both in the Greens Creek Field and in the East Morgantown Field. If you would like, I think I can refer to notes and tell you which are the type wells in each field. Is that necessary? Would you like me to do that?

Q. No, that's not necessary. A. But it has been defined, yes.

Q. Is there another Harper Sand Gas Pool in East Morgantown and Greens Creek Field other than the one you have shown here? A. In a technical or a geological sense, yes, because of the separation that I believe is present will separate the north Harper from the south Harper, but the Board does not recognize that and as far as they are concerned the Harper Pool is a single pool in the East Morgantown Field.

Q. They do not recognize this particular pool that you are showing as a separate pool from other Harper Sand Pools in the East Morgantown or the Greens Creek? A. Well, they recognize—the Getty-Rogers Well, if you will notice on my map I have indicated the Greens Creek [113] and East Morgantown. The Getty-Buckley Well is in the East Morgantown Field. The Getty-Rogers Well just north of it is in the Greens Creek Field. Now, these two fields started out many miles apart and then as development proceeded they grew closer and closer together and finally they met up. It's perfectly obvious that the southern part of Greens Creek and the northern part of East Morgantown are the same Harper Pool, although the Board recognizes a separation between 28 and 33.

Q. According to the Special Field Rules by the Board in these two units though, the Buckley and the Willoughby Well and the Carlisle Well are in the Harper Sand Gas Pool of East Morgantown and the Rogers and the Barnes and Sipp Wells and the Williamson Well are in the Harper Sand Gas Pool in Greens Creek Field, is that correct? A. That is exactly true.

Q. You have also testified, I believe, that it is possible that the J. C. Williamson Well up in Section 21 may be associated with this pool and may be in the common accumulation? A. That is correct. Not only the Williamson, but wells further north off of my map in the main part of Greens Creek Field.

Q. So, those wells could also be competing for the same common source? A. In a general way, yes, because they would all be producing from the same pool.

[114] Q. You were asked some hypothetical questions about producing ratably from this well. Are you telling the Board that these wells, based on the production figures you have given, that they have been producing ratably up until now? A. No, I didn't say that.

Q. Have you made a study to determine whether or not they have been producing ratably? A. I think my exhibit that I offered to the Board shows that none of the wells have produced exactly or even approximately the same amount of gas during their productive life.

Q. And this, of course, is a function of the ability of the wells to produce as much as they can when they can do it, is that correct? A. Presuming that the purchase will take all they can produce.

Q. Have you made a determination as to whether or not any of these wells have been producing within their allowables, or exactly what allowable has been assigned to each of these wells? A. No, I have not.

Q. If a well produces in excess of its allowable, in your opinion would that well be producing unratably with other wells? A. That's right. However, under our formula it would [115] have a period of time to adjust its over-production. So, over a longer period of time, if the allowable rule was enforced properly then they should balance out.

Q. Now, the Rogers 28-11 Well that you have shown here, has already produced in excess of three billion cubic feet out of this reservoir, is that correct? A. That's correct.

Q. Do you know what the producing rate for the Rogers Well is? A. In July of this year it was 208 million cubic feet per month.

Q. What does that translate to per day? A. Say, about seven million feet a day.

Q. There is no question then that the Rogers Well has drained acreage under the Barnes Well and under the Getty-Sipp Well, is there? A. No, because the Rogers Well is—these wells all drain from the same pool. It's just a matter of degree. So, the Rogers Well has drained from the—predominantly from its offsetting tracts—the part of 29 and the part of 33 that's underlain with the reservoir. That's the area where most of the drainage took place from the Rogers Well.

Q. And as long as the Rogers Well continues to produce more per day or per month than either the Barnes or the Sipp Well, then it will continue to drain from that acreage, will it not? [116] A. Yes.

Q. And the Buckley Well produced over 1.7 billion cubic feet from this reservoir. It likewise has drained gas from under the Carlisle Well and the Tomlinson-Willoughby Well, has it not? A. That's true because its been in production just about a year longer than the other two wells.

Q. And it's current rates are in excess of both the

Carlisle and the Willoughby Well, are they not? A. That's correct.

Q. And as long as that continues they will continue to drain from those uints, will they not? A. Well, it's really, we are kind of over-simplifying this because the Getty-Buckley is right in the middle of the reservoir and it's basically draining off of its own unit predominantly. If there is any drainage—actually, if you go to drainage on an acre/foot basis or the underlain acres, then there wouldn't be any drainage because those two wells have relatively a small portion of the reservoir underlying their units. But if you take it just on the basis of the well and forget the geology and forget the unit assignment, then the more gas any given well produces over the life of the reservoir, it's going to be draining the other wells.

Q. These wells are not producing at uniform rates in this pool, are they? [117] A. It's perfectly obvious that this exhibit speaks for itself.

Q. They are producing disproportionately to the number of acres that are assigned to each unit for that well, are they not? A. Very definitely.

Q. All of these production figures that you have shown in here for the months of 1981 and 1982 were prior to the time that Coastal filed its petition and prior to the time that Transcontinental indicated any desire not to take anyone's gas from this well, is that correct? A. I can check the record. I don't know when this petition was filed precisely, but my records go through June. Then if the petition was filed after that—that record will have to speak for itself. I can't answer specifically.

BY MR. STEWART:

Thank you.

REDIRECT EXAMINATION

BY MR. TAYLOR:

Q. Mr. Knight, notwithstanding the fact that the Special Field Rules for Greens Creek and Morgantown Field define on paper a separation, it's your testimony that you are of the opinion that the six wells indicated on your Exhibit 1 are, in fact, producing from a common pool? A. That's correct. There is absolutely no doubt about [118] it. I think the geological evidence is overwhelming and this is demonstrated very clearly both by my maps and this cross section. The correlations are excellent. The reservoir gas/oil ratio from all the wells is essentially the same. Any parameter you want to use for analysis indicates beyond any doubt that these wells are all producing from the same reservoir.

Q. Mr. Stewart asked you some questions about ratable production. Ratable production does not necessarily mean equal production between wells, does it?

BY MR. STEWART:

I object to that question. I think that is a matter of law for the Board to determine. Mr. Knight has certainly already testified as to his opinion as to what ratable production is.

BY CHAIRMAN FANCHER:

Well, I had a hard time understand what that had anything to do with in the first place, Mr. Stewart, so, I will let him ask his question.

(PENDING QUESTION READ BACK BY THE COURT REPORTER)

A. (The witness) I presume ratable production means production that follows a rate that has been established, and my understanding of that word means that if a well is capable of producing a certain amount of gas as com-

pared to another well, then they should produce the same amount and that would [119] be ratable production and in that case it would be equal production.

Q. But on your Exhibit 3 you are showing figures for production, say, the June 1982 production for the wells—everything except the Barnes—none of the wells are producing equal amounts of gas, are they? A. No.

Q. That is not to say that they are not—that any given well is not producing at its maximum efficient rate. A. No, not at all.

BY MR. STEWART:

I'm going to object to the form of the question. Mr. Taylor, he didn't swear in, and if he wants to testify——

BY CHAIRMAN FANCHER:

Yes, I think you're leading him a little bit, Mr. Taylor

BY MR. TAYLOR:

Yes, sir, I'll stop leading him.

Q. (Mr. Taylor) Mr. Knight, Mr. Stewart alluded Transco's desire not to take certain gas from this pool. If Transco, if as between two wells that were producing at their maximum efficient rate of flow, one of the wells was cut back because Transco desired not to take certain gas from that well, in your opinion would there be unratable withdrawals as between those two wells in the common pool? A. The answer to that question, I think, would depend [120] ultimately on how the allowables, if any, were applied to the production from the wells. If the wells were entitled to produce their maximum efficient rate for a long period of time, and that was—then one well that was capable of producing more was arbitrarily cut back, that would penalize the owners of the well that was capable of the best production. Now then, whether or not that would be an appropriate thing to do, I just can't answer that. If the

absence—if we apply the allowables, then it will correct itself, but if there is no application of allowables to the matter, then I think that cutting back a well that is capable of a higher rate of production would penalize the people in that well.

Q. By penalize, you mean it would result in unratable withdrawals in the common pool? A. If we are using rate to mean the maximum efficient rate, it very definitely would.

BY MR. TAYLOR:

That's all the questions I have of this witness.

BY CHAIRMAN FANCHER:

Any re-cross, Mr. Stewart?

BY MR. STEWART:

No, sir.

EXAMINATION BY CHAIRMAN FANCHER:

Q. Mr. Knight, you said something that kind of bothered me. You said something about the allowables being [121] properly enforced. Did you intend to imply by that that the allowables were not being properly enforced? A. No, no. What I meant to say is if the allowables are fixed in such a way that all except the low volume deficient wells would produce over years period of time very close to the same amounts of gas, then this matter would not take on the situation that we see here, and the allowables have been fixed in this case, presumably, at a high rate where all wells except the highest well, presumably, is not capable of making its allowable. So, no, I meant no implication at all that the Board was not enforcing the allowables.

Q. Well, are you thinking that we should change our allowable rule as to the production of gas? A. Mr. Chairman, that's a difficult question, and I would decline to answer it just on the spur of the moment.

BY CHAIRMAN FANCHER:

Okay. Thank you.

FURTHER REDIRECT EXAMINATION
BY MR. TAYLOR:

Q. Mr. Knight, the chairman spoke about allowables. I believe that allowables in this state are based on deliverability capacity of wells, are they not?

BY MR. STEWART:

Mr. Chairman, that's not an accurate portrayal of the Statewide Rule 34.

BY CHAIRMAN FANCHER:

Well, it's pretty close, I think, Mr. Stewart.

[122] BY MR. TAYLOR:

Q. Well, as between, say, let's take our six wells that you have shown on your Exhibit 3, take, for example, the Getty-Sipp Well, had an allowable based upon its deliverability capacity, but as Mr. Stewart said, Transco desired not to take a certain percentage of gas produced from that well and cut the well back to below its deliverability capacity, do you have an opinion as to whether or not that would result in waste to the owners in the Sipp well? A. No question about it, it would. It would result in waste to them.

BY MR. TAYLOR:

That's all the questions I have of this witness.

BY MR. STEWART:

No further questions.

BY CHAIRMAN FANCHER:

Call your next witness.

Excerpts from the testimony of Julius Ridgway

JULIUS RIDGWAY

Having been duly sworn by the Chairman, gave the following testimony:

DIRECT EXAMINATION

BY MR. TAYLOR:

Q. State your name, please, sir. A. Julius Ridgway.

Q. Mr. Ridgway, where do you live? [123] A. I live in Jackson, Mississippi at 51 East Brooke.

Q. What is your occupation? A. I'm engaged in petroleum exploration and oil and gas business.

Q. Are you appearing here today on behalf of Coastal Exploration, Inc., the Petitioner? A. Yes, I am.

Q. Do you hold any position in Coastal Exploration? A. I'm the president of the corporation and I own 100 percent of it.

Q. How many employees do you have? A. I have three employees.

Q. Who owns the stock in Coastal Exploration, Inc? A. I own the stock.

Q. Are you Coastal? A. Yes, I'm Coastal.

Q. Are you a major or an independent? A. I'm an independent operator.

Q. Mr. Ridgway, would you give the Board the benefit of your educational background? A. Yes, I graduated from the University of Mississippi with a Bachelor of Science in Geological Engineering in 1956.

Q. What about your work experience in the area of oil and gas? A. I was employed in 1958 as a petroleum geolo-

gist [124] for a family company, Ridgway Management, and in 1966 I was employed by the First National Bank in the Petroleum Department until 1973.

Q. What did you do with the First National Bank? A. I supervised the oil and gas loans.

Q. Did that call on you to make, for example, reserve estimates? A. Yes, it did.

Q. Geological studies? A. That's right.

Q. What about in your work in the family business, did that likewise call on you to make geological evaluations? A. That's correct.

Q. Has your business since 1958 included buying and trading in oil and gas leases? A. That's correct.

Q. And developing leases by drilling wells? A. That's correct.

Q. Can you give the Board some idea of how many wells you have drilled in the state of Mississippi since 1958, or participated in the drilling of? A. I would expect it is in excess of 200 wells.

Q. Are you familiar with what I call the Hosston trend? A. Yes, I am.

[125] Q. In what area of the state is it found? A. The Hosston trend primarily lies within what is called the Mississippi Salt Basin, and that is in the counties, Covington, Jeff Davis, Lawrence, Marion and Lamar Counties, primarily.

Q. How would you describe your involvement in the development of the Hosston trend in Mississippi? A. I became active in 1975 acquiring leases and participating in the development and drilling of prospects and development of fields in this area since that time.

Q. How many wells do you and your company own an interest in in the Hosston trend? A. We own interests in 18 producing wells in the Hosston trend.

Q. Can you give the Board some idea of the fields you own an interest in in this area? A. Yes, they are included in Oakvale, West Oakvale, Greens Creek, East Morgantown, Columbia and Improve.

Q. Would you characterize you and your company's ownership in these areas as ownerships of small or large undivided working interests? A. These are small working interests. They are comprised of lease interests that range from one acre in size to less than 20 acres in size.

Q. How have you sold the gas produced from these wells? [126] A. I, as a practice, have relied on the operator in each unit to market and sell my gas to their purchasers.

Q. Is that usual or unusual? A. That's the usual practice in the industry.

Q. Do you know who has been buying your gas from the 18 wells that you own an interest in in the Hosston trend? A. Yes, Transco is the purchaser of all the gas from all these wells—not all of the gas, but from all of these wells.

Q. By Transco, do you mean Transcontinental Pipe Line Company? A. That's correct.

Q. As a non-operator/producer, have you previously ever had to sign a gas contract in order to sell your share of production from these wells? A. I have only been required or asked to sign a gas purchase contract in the case in which I was acting as the operator.

Q. That was in West Oakvale? A. Yes, that was in West Oakvale, recently.

BY CHAIRMAN FANCHER:

Mr. Taylor, let me stop you right here because I anticipate there is going to be an effort to get a lot of contracts into evidence. We may admit them into evidence, but we are not going to consider them. Contracts are not this Board's business.

[127] BY MR. TAYLOR:

I couldn't agree more and I only have one.

BY CHAIRMAN FANCHER:

So, let's don't get into contracts with him.

BY MR. TAYLOR:

Mr. Chairman, I'm simply attempting to show that the customs practiced in the industry by owners of small working interests has been not to sign contracts.

BY CHAIRMAN FANCHER:

I understand that, but let's don't talk about contracts.

BY MR. TAYLOR:

Mr. Chairman, we would tender the witness at this time as an expert in petroleum geology and as an expert in the development of oil and gas interests in the Hosston trend.

BY CHAIRMAN FANCHER:

Mr. Stewart, any objections to the qualifications of the witness?

BY MR. STEWART:

No, Mr. Chairman.

BY CHAIRMAN FANCHER:

Let the record show that the qualifications of the witness are accepted.

BY MR. TAYLOR:

Q. Mr. Ridgway, have you undertaken a study of the Harper Sand Gas Pool of the Hosston formation in the area of [128] Greens Creek and Morgantown Fields? A. Yes, I had Mr. Wilbur Knight prepare the exhibit for this testimony.

Q. Have you become familiar with the relative production and pattern of history of the wells which he identified as being in the common pool? A. Yes, I have.

Q. Have you previously reviewed Exhibit 1, which Mr. Knight prepared? A. Yes, I have studied this.

Q. Do you have an opinion as to whether or not the six wells he has identified in his Exhibit 1 are, in fact, completed into and producing from a common pool? A. It is my opinion that they are producing from a common pool.

Q. Mr. Ridgway, how many of those six wells does Coastal Exploration own an interest in? A. They own an interest in four of the six wells.

Q. I show you this document and ask you if you can identify it. A. (Examines document) Yes, this is a schedule of the working interest percentages I have in the four wells that I own within this area designated.

Q. Is this exhibit correct and accurate? A. Yes, it is.

[129] BY MR. TAYLOR:

Mr. Chairman, we would offer this summary of ownership as Exhibit 4.

BY CHAIRMAN FANCHER:

All right, let it be marked.

(THE SUMMARY OF OWNERSHIP WAS MARKED AS EXHIBIT 4 TO THE TESTIMONY OF MR. RIDGWAY AND APPEARS AS FOLLOWS:)

Exhibit 4

COASTAL EXPLORATION INC.'S OWNERSHIP IN WELLS & UNITS

WELLS & UNITS	PERCENT OF OWNERSHIP INTEREST IN UNIT
Getty Oil Co.—Rogers 28-11 Well No. 1	.0261220
Getty Oil Co.—Sipp 20-9 Well No. 2	.0066552
Tomlinson Interests, Inc.— Willoughby 3-5 Well No. 1	.00468750
Florida Exploration Co.— Barnes 29-1 Well No. 1	.0015625

[131] BY MR. TAYLOR:

Q. Mr. Ridgway, I believe that in only one of these wells does your interest, and by that I mean Coastal's interest, exceed one percent in the unit, is that correct? A. That is correct.

Q. That would be in the Getty-Rogers Well? A. That is in the Getty-Rogers Well where my largest interest is situated.

Q. Did Coastal pay its way on these four wells it owns an interest in the common pool? A. Yes, I participated in paying my pro rata part of the drilling and development costs in all of these wells.

Q. What about ongoing operating costs? A. I have also paid my share of the ongoing operating costs, yes, in each of these wells.

Q. Mr. Ridgway, after the four wells identified on Exhibit 4 were drilled and completed, what arrangements did Coastal make to market its share of gas to be produced from these wells? A. The arrangement that I made for the marketing of our share of gas was done by the usual industry practice that I'm familiar with, whereby, the operator, being Getty in the case of the Rogers and the Sipp, and Tomlinson in the case of the Willoughby, and Florida Exploration with the Barnes; whereby, they sent to the minority working interest owners, [132] those who had been nonsignatory parties to the gas contract, they sent this letter agreement asking for authorization to sell our share of the gas under the Operating Agreement subject to the terms of the contract which they had entered into.

Q. Why did you not sign your own gas contracts for your interest in these four wells? A. I was never offered the opportunity by either the purchaser or the operator.

Q. Well, is it usual or unusual in the business for the owner of a small undivided interest like yourself not to

sign a gas contract? A. It's the usual custom and practice not to sign a not to sign a contract or a ratification.

Q. Mr. Ridgway, I hand you this document and ask you if you can identify it. A. (Examines document) Yes, this is the—I don't know whether we want to get into this, but this a gas purchase contract.

Q. Can you identify which gas purchase contract? A. Between Getty Oil Company, as the seller, and Transcontinental Gas Pipe Line Corporation, as the buyer.

Q. Is that the contract under which your gas has been sold from the Getty-Sipp, the Getty-Rogers and the Tomlinson-Willoughby Wells? A. That is correct.

[133] BY MR. TAYLOR:

Mr. Chairman, we would offer into evidence as Exhibit 5 a copy of the contract, for the record.

BY CHAIRMAN FANCHER:

We will admit it for the record, and for the fact that the contract is in existence.

• • • • • • • • • •

[134] BY MR. TAYLOR:

Mr. Chairman, we would also offer for the record at this time a copy of the Ratification and Amendment of Gas Purchase Contract executed by Tomlinson and other working interest owners covering the Willoughby Well. This has been produced by Transco pursuant to a subpoena duces tecum.

BY CHAIRMAN FANCHER:

Who is going to identify it.

BY MR. TERRELL:

Let me look at it. (Examines document) We can identify it, Mr. Chairman.

BY MR. STEWART:

We would stipulate that this is a copy.

BY CHAIRMAN FANCHER:

Okay, by stipulation then it will be admitted for the record.

BY MR. TAYLOR:

Mr. Chairman, do you want a copy of it?

BY CHAIRMAN FANCHER:

No, sir.

[135] BY MR. TAYLOR:

Mr. Chairman, we would also offer into evidence at this time another document produced by Transcontinental in response to a subpoena duces tecum, which is a letter of April 15, 1982, reflecting the prices being paid under the contract introduced as Exhibit 5.

BY CHAIRMAN FANCHER:

Has Mr. Stewart seen that, or did he furnish it?

BY MR. TAYLOR:

He furnished it to me.

BY MR. STEWART:

We will stipulate this document is authenic but we disagree with the fact that it does reflect the current price being paid. It reflects the terms and conditions of a redetermination of the price.

BY CHAIRMAN FANCHER:

All right, sir. Again, we will admit it for the record, not for its contents.

BY MR. TAYLOR:

Mr. Chairman, my purpose in introducing this is to show that the price which has subsequently been offered to my client is a price which is different from that which has been paid to the operator of the wells. My ultimate purpose being to show that the price is discriminatory.

BY CHAIRMAN FANCHER:

Well, Mr. Taylor, we don't have anything to do with [136] fixing the price of gas. We do classify wells under the NGBA, but then when you get out into the purchase and sale, we don't have anything to do with that.

BY MR. TAYLOR:

Mr. Chairman, my only point is, for the record, that under Rule 48 I need to establish that Transco is proposing to purchase with discrimination. In order to show that I need to at least, for the record, show that they are offering different prices to owners in the same pool. That is our purpose in offering this exhibit.

BY CHAIRMAN FANCHER:

All right. Let it be introduced for the record.

(THE LETTER DATED APRIL 15, 1982, WAS MARKED AS EXHIBIT 7, FOR THE RECORD, AND APPEARS AS FOLLOWS:)

Exhibit 7

CONFORMED COPY
CONTRACT #007 06991

Transcontinental Gas
Pipe Line Corporation

A Subsidiary of Transco Companies Inc.

2700 Post Oak Boulevard
P.O. Box 1396
Houston, Texas 77001
713-871-8000

April 15, 1982

Getty Oil Company
P.O. Box 1404
Houston, TX 77001

Attention: Natural Gas Department

R: Transco's Gas Purchase Agreement #06991—Newsom Field, Marion County, Mississippi

Gentlemen:

Reference is made to the subject gas purchase agreement (Agreement) dated August 6, 1980 between Transcontinental Gas Pipe Line Corporation, as Buyer, and Getty Oil Company, as Seller, in the Newsom Field, Marion County, Mississippi.

Pursuant to Section 2.B.(3) of Article X, "Price", of the Agreement, Seller has requested in writing a redetermination of the price, effective April 1, 1982.

Seller has chosen the price provided by Subsection B. (4)(b) of Section 2 of Article X which is "the arithmetic average of the three (3) highest prices per MMBtu contracted for and being paid by an interstate pipeline, as of the date of such request, for gas of a similar quality and

comparable quantity and delivery conditions under contracts of ten (10) years term or more covering gas produced and delivered within the State of Mississippi and adjacent offshore areas under state or federal taxing authority."

The highest prices of which Transco is aware and can verify for gas contracted for and being paid on March 29, 1982 are prices which appear in its own Gas Purchase Agreements as follows:

St. Joe Petroleum (U.S.) Corporation	#06696
Greens Creek Field, Mississippi	$8.665/MMBtu
Harkins & Company	#06687
Greens Creek Field, Mississippi	$8.665/MMBtu
CanDel Oil (U.S.), Inc.	#06697
Greens Creek Field, Mississippi	$8.665/MMBtu

The arithmetic average of the above prices is $8.665 per MMBtu. However, Section 2.D. of Article X, "Price" of the Agreement provides in part:

> "Notwithstanding any other provisions in this agreement, the price to be paid for gas delivered or for which payment is due hereunder shall never exceed one hundred ten percent (110%) of the equivalent price per MMBTU for No. 2 Fuel Oil. . . ."

The most current price available on March 29, 1982 for No. 2 Fuel Oil as determined in Section 2.B.(4)(c) of Article X of the Agreement was the February, 1982 price of $.997 per gallon. Pursuant to the subject Agreement, each gallon of No. 2 Fuel Oil is deemed to contain 0.1387 MMBtu. Therefore, $.997 per gallon of No. 2 Fuel Oil converts to $7.188 per MMBtu.

In view of the above and subject to the terms and conditions of the Agreement, Buyer offers Seller one hundred

ten percent (110%) of the No. 2 Fuel Oil price as converted, that price being $7.907 per MMBtu, plus taxes, effective April 1, 1982.

Please indicate your concurrence by the execution of two (2) copies of this letter agreement. One (1) fully executed original should be returned to Transco for our use and file.

Very truly yours,

/s/ J. PHIL MCGOWAN, JR.
J. Phil McGowan, Jr.
Vice President – Gas Purchases

BFB
MH

CHM/BFB/pm
GASS/w07178

ACCEPTED and AGREED to this
7th day of May, 1982

GETTY OIL COMPANY

By /s/ JERRY JONES
Jerry Jones
Attoney-in-Fact

[139] BY THE CHAIRMAN:

Mr. Taylor, I think what you need to show—I hadn't heard anybody say yet—I understand that Transco refused to buy this gas.

BY MR. TAYLOR:

That's where I'm going.

BY CHAIRMAN FANCHER:

All right, let's get to it.

BY MR. TAYLOR:

Q. I believe that Exhibit 3 reflects that the Getty-Rogers Well went on production as early as April 1981, is that correct? A. That is correct.

Q. And followed by the Getty-Sipp Well, which went on production in October of 1981, is that correct? A. That is correct.

Q. And then the Tomlinson-Willoughby Well, which you also own an interest in, came on production in April 1982. A. That is also correct.

Q. Now, was "your" share of gas being produced when these two wells first began producing? A. Yes, my share of gas has been produced right along with that of the operator and purchased by Transco, the purchaser, since the first production.

Q. To the best of your knowledge was your share of [140] gas produced ratably from these wells? A. To the best of my knowledge it has been produced ratably.

Q. Do you know on what basis Transco took and purchased your gas from the date of first production until at least this summer? A. Yes, they have purchased my gas on the same terms and conditions that they purchased gas from the operator.

Q. Were you paid for your gas which was taken and purchased by Transco? A. Yes, I have been paid.

Q. Until at least this summer? A. I have been paid up through the most recent payment, but I have been notified I may not be paid in the future.

Q. That's my next question, Mr. Ridgway, at some point in time were you advised by the operator or by Transco that Transco proposed not to continue taking and purchasing your share of gas produced from the Sipp, Rogers and Willoughby Wells? A. Yes, we received a letter from Transcontinental, as well as a letter from Getty, notifying us of the intention to discontinue purchasing gas from the nonsignatory parties to the gas purchase contract, that being those parties that never signed the actual ratification or the contract.

[141] Q. Mr. Ridgway, I hand you a letter dated June 17, 1982, and ask you if you can identify that, please. A. (Examines document) Yes, this is a copy of the letter that I received from Getty.

BY MR. TAYLOR:

Mr. Chairman, we would offer this into evidence as Petitioner's Exhibit 8.

BY CHAIRMAN FANCHER:

Any objection, Mr. Stewart?

BY MR. STEWART:

No.

BY CHAIRMAN FANCHER:

All right, let it be marked and received in evidence.

(THE LETTER OF JUNE 17, 1982, FROM GETTY WAS MARKED AS EXHIBIT 8 TO THE TESTIMONY OF MR. RIDGWAY AND APPEARS AS FOLLOWS:)

Exhibit 8

GETTY

Getty Oil Company
Post Office Box 1404, Houston, Texas 77001
Telephone: (713) 658-9361

Natural Gas Sales and Purchases

June 17, 1982

WORKING INTEREST OWNERS

RE: GETTY OIL COMPANY OPERATED WELLS:
Buckley 33-6 No. 1,
Dawson 33-14 No. 1,
Rogers 28-14 No. 1,
Morgan 9-14 No. 1, and
Sipp 20-19 No. 2

Newsom Field, Marion County, Mississippi

Gentlemen:

Since initial deliveries, Getty, as operator, of the captioned wells, has been marketing several working interest owner's share of gas production in accordance with ARTICLE VI., C., of the various operating Agreements covering each well. The Operating Agreements state that Getty, as operator, has the right but not the obligation to purchase and dispose of gas for which any working interest owner fails to make marketing arrangements.

Transcontinental Gas Pipe Line Corporation (Transco), by letter dated May 19, 1982, notified Getty that effective June 1, 1982, Transco would only take gas produced attributable to the pro rata working interest of parties that have executed gas purchase contracts (Transco's letter attached). In subsequent conversations with Transco we have not been able to convince Transco to continue taking non-signatory parties gas in the Newsom Field Area. How-

ever, we have been successful in obtaining an extension to the effective date of this notice to *July 1, 1982.* Getty recommends that each non-signatory party immediately make arrangements to contract their working interest share of the gas production from the captioned wells.

Getty hereby notifies each working interest owner that their share of gas production from the captioned Getty operated wells will be deferred or under-produced effective *July 1, 1982* unless Getty is notified of contract arrangements.

If you have any questions concerning this notice, please call David Zarider, (713) 651-4465 or Ray Corcoran (713) 651-4462.

Very truly yours,

GETTY OIL COMPANY

/s/ RAY CORCORAN
Ray Corcoran
Gas Activities Manager

DZ/RC/ss
cc: Ms. Trisha S. Pollard
Transcontinental Gas Pipe Line Corporation

Transcontinental Gas
Pipe Line Corporation

A Subsidiary of Transco Companies Inc.

2700 Post Oak Boulevard
P.O. Box 1396
Houston, Texas 77001
713-871-8000

May 19, 1982

Getty Oil Company
P. O. Box 1404
Houston, Texas 77001

Attention: Mr. E. R. Corcoran

Re: Transco's Gas Purchase Agreements #06991, #61008, #06646, #61084, #61039, #61045, #61218, #61220 and #06855—Newsom Field, Marion County, Mississippi

Gentlemen:

This is to advise you that as of June 1, 1982, Transcontinental Gas Pipe Line Corporation (Transco) requests that gas deliveries for wells in the subject field operated by Getty Oil Company (Getty) and committed under the subject gas purchase agreement with Getty (#06991), and other gas purchase contracts between Transco and Florida Exploration Company (#61008); Tomlinson Interests, Inc. (#06646); Jones-O'Brien, Incorporated (#61084); Southland Royalty Company (#61039); ACF Petroleum Company, Inc., Drillamex Inc., and Ocelot Oil Company (#61045); Sabine Production Company (#61218 and #61220); Tomlinson Interests, Inc., Transco Exploration Company, Weaver Oil and Gas Corporation, Marline '78 Company (U.S.A.), Albert F. Thomasson, Burgess A. Thomasson, Richard Bertram & Co., ProCo, Inc., Jacksoco Oil Co., Inc., and Louis Mullen (#06855) be reduced to

contract minimum quantities attributable to their working interest until further notice.

Effective June 1, 1982 Transco will only take production attributable to the pro rata working interest of the above-named signatory parties under the various Getty wells, and until further notice will no longer take any gas being sold by the operator under the operating agreement.

This action is being taken because the volume of gas which is currently available for delivery to Transco under its existing gas purchase agreements substantially exceeds the demand for gas in our market areas. Also, the decline in oil and other fuel prices, coupled with increasing gas purchase costs, has resulted in the loss of some industrial market in the areas served by Transco's system. It is anticipated that this situation will result in additional market loss by certain of our distribution customers. Transco must, therefore, take measures such as this to reduce our takes in fields where we are currently taking more gas than is dedicated under contract. Similar notices containing this request are being given by Transco in all instances where permitted by contract.

Should you have any questions, please call Ms. Trisha S. Pollard at 713/871-2552.

Very truly yours,

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

/s/ J. PHIL MCGOWAN, JR.
J. Phil McGowan, Jr.
Vice President – Gas Purchases

JPMc:lkk
cc: see attached list

GPC #61008

Florida Exploration Company
1990 Post Oak Blvd., Suite 77056
-Attn: Mr. R. D. Gramling

GPC #06646

Tomlinson Interests, Inc.
925 Houston Natural Gas Building
Houston, Texas 77002
-Attn: Mr. Jim S. Denison

GPC #61084

Jones O'Brien, Incorporated
P. O. Box 5928
Shreveport, Louisiana 71105-0928
-Attn: Mr. Tom F. Jordan

GPC #61045

ACF Petroleum Company, Inc.
c/ Florida Exploration Company
1990 Post Oak Blvd., Suite 1400
Houston, Texas 77056
-Attn: Mr. R. D. Gramling

Drillamex Inc.
c/o American Express Company
Investment Division—39th Floor
125 Broadway
New York, New York 10019
-Attn: Mr. Robert Rank

Ocelot Oil Company
c/o Florida Exploration Company
1990 Post Oak Blvd., Suite 1400
Houston, Texas 77056
-Attn: Mr. R. D. Gramling

GPC #61218

Sabine Production Company
1200 Mercantile Bank Building
Dallas, Texas 75201
-Attn: Mr. Louis Morrison

GPC #61039

Southland Royalty Company
1000 Fort Worth Club Tower
Fort Worth, Texas 76102
-Attn: Mr. John Legg

GPC #06855

Tomlinson Interests, Inc.
925 Houston Natural Gas Building
Houston, Texas 77002
-Attn: Mr. Jim S. Denison

Transco Exploration Company
P. O. Box 1396
Houston, Texas 77251
-Attn: Mr. N. W. Wilson, III

Marline '78 Company (U.S.A.)
4900 Capital Bank Plaza
Houston, Texas 77002
-Attn: Mr. A. B. Copland

Weaver Oil and Gas Corporation
5599 San Felipe, Suite 1100
Houston, Texas 77056
-Attn: Mr. L. D. Ferrin

Albert F. Thomasson
3940 Montclair Road, Suite 503
Birmingham, Alabama 35213

Burgess A. Thomasson
P. O. Box 1641
Mobile, Alabama 36633

Richard Bertram & Co.
P. O. Box 59-2737
Miami, Florida

Jacksoco Oil Co., Inc.
P. O. Box 173
Mobile, Alabama 36601
–Attn: Mr. Robert Jackson

ProCo, Inc.
1122 First National Bank Building
Jackson, Mississippi 39205
–Attn: Mr. Homer Lynn

Louis Mullen
P. O. Box 929
Brookhaven, Mississippi 39601

[143] BY MR. TAYLOR:

Q. Mr. Ridgway, I believe that Exhibit 8 has attached to it a copy of a letter dated May 19, 1982, from Transco, is that correct? A. The letter dated May 19, 1982, from Transcontinental Gas Pipe Line to Getty, yes.

Q. Would you read the second paragraph of the letter, please, sir? A. (Reading) "Effective June 1, 1982, Transco will only take production attributable to the pro rata working interests of the above named signatory parties under the various Getty wells, and until further notice will no longer take any gas being sold by the operator under the Operating Agreement."

Q. Would you turn back to the first page of Exhibit 8 and will you, if you would, please, read the first sentence of the second paragraph. A. (Reading) "Transcontinental Gas Pipe Line Corporation (Transco), by letter dated May 19, 1982, notified Getty that effective June 1, 1982, Transco would only take gas produced attributable to the pro rata working interests of parties that have executed gas purchase contracts. Transco's letter attached."

Q. Let me stop you at this point, Mr. Ridgway, as of this date, June 17, had you signed a gas contract with Transco? [144] A. No, I had not signed a gas purchase contract with Transco.

Q. Would you read the next sentence, please, sir? A. (Reading) "In subsequent conversations with Transco we have not been able to convince Transco to continue taking nonsignatory parties gas in the Newsom Field Area."

Q. Now, would you read the first sentence of the third paragraph? A. (Reading) "Getty hereby notifies each working interest owner that their share of gas production from the captioned Getty operated wells will be deferred or underproduced effective July 1, 1982, unless Getty is notified of contract arrangements."

Q. And by referring to the above referenced wells they

are referring specifically to the Rogers Well and the Sipp Well that you own an interest in? A. That's correct. I would also like to point out that in the May 19th letter from Transco, there was attached that I was not among those listed in the first paragraph.

Q. I'm not following that. A. Well, the sentence that we read stated that the above named signatory parties under the various Getty wells, and I was not in that group.

Q. You were not in the group of people whose gas they would continue to take? [145] A. That's correct, yes, sir.

Q. Now, I show you a letter dated May 20, 1982, on the letterhead of Tomlinson Interests and ask you if you can identify that. A. Yes, I received a copy of this letter from Tomlinson Interests dated May 20, 1982.

BY MR. TAYLOR:

Mr. Chairman, we would offer this into evidence as Exhibit 9.

BY CHAIRMAN FANCHER:

Mr. Stewart, have you seen it?

BY MR. STEWART:

Yes, sir.

BY CHAIRMAN FANCHER:

Any objection?

BY MR. STEWART:

No.

BY CHAIRMAN FANCHER:

All right, let it be marked.

(THE LETTER DATED MAY 20, 1982, FROM TOMLINSON INTERESTS WAS MARKED AS EXHIBIT 9 TO THE TESTIMONY OF MR. RIDGWAY AND APPEARS AS FOLLOWS:)

Exhibit 9

TOMLINSON INTERESTS, INC.

925 Houston Natural Gas Building
Houston, Texas 77002
713-651-9701

Jim S. Denison, Jr.
Manager
Natural Gas Department

May 20, 1982

WORKING INTERESTS OWNERS
IDENTIFIED ON ATTACHED
DISTRIBUTION LIST

Gas Sales Arrangements
Willoughby 3-5 Well No. 1
E. Morgantown Field, Marion County, Mississippi

You each own a working interest in gas from the subject well operated by Tomlinson Interests, Inc. Information available to us at this time indicates that all (or a portion) of your gas is still uncommitted.

Approximately 58% of the gas from this well is attributable to certain leases acquired from Getty Oil Company, which leases are covered by that certain gas purchase contract dated August 6, 1980 between Getty and Transcontinental Gas Pipe Line Corporation. Tomlinson and those working interest owners with production attributable to the leases acquired from Getty have ratified the Getty-Transco contract with respect to such production. The remaining, approximately 42% of the gas from the well is not so committed, and Transco was unwilling to accept the commitment of any working interest owner's share thereof absent agreement to amend said contract to include language which would allow Transco, at its option,

to reduce the price payable thereunder so as to assure their competitiveness in their marketing areas. This condition was unacceptable to the working interest owners who have ratified the Getty-Transco contract; and, Transco has verbally indicated that they intend to limit their takes to the gas which is attributable to the leases acquired from Getty.

Pursuant to the terms of that certain operating agreement dated October 1, 1981, covering all of Section 3, Township 4 North, Range 19 West, in the subject field, each party shall take in kind or separately dispose of its proportionate share of gas production. In the event any party or parties fail(s) to make disposition of its (their) pro rata part of said production gas balancing will be implemented under the gas balancing agreement attached as Exhibit "E" to the aforesaid operating agreement.

Inasmuch as deliveries of gas were begun to Transco on April 18, 1982, we will appreciate your notifying us at your earliest convenience of the arrangements you have made or intend to make for disposition of your share of uncommitted production. If you have made no such arrangements, to the extent that production is not curtailed by Transco, we plan to disburse to you, for so long as your gas remains uncommitted, your pro rata share of the proceeds we receive from Transco. Therefore, it is imperative that we receive from you advice as to the commitment status of your gas.

Attached, for your convenience in responding to us, is a form. Please complete it so as to accurately reflect the status of your gas and return same to the following address:

Tomlinson Interests, Inc.
925 Houston Natural Gas Building
Houston, Texas 77002
Attention: Mr. R. E. Sagstetter
Manager, Revenue Accounting

Thank you for your cooperation in this matter.

Sincerely,

TOMLINSON INTERESTS, INC.

/s/ JIM S. DENISON, JR.
Jim S. Denison, Jr.
Manager, Natural Gas Department

cc: Paula Broussard
Tom Graves
Judy Rogers
Terry Ryan
Ray Sagstetter

[148] BY MR. TAYLOR:

Q. You previously testified you received notices from both Getty and Tomlinson that Transco would not take your share of gas, is that correct? A. That's correct.

Q. Is what has been marked as Exhibit 9 the notification you received from Tomlinson? A. Yes, it is from Tomlinson Interests.

Q. In the second paragraph, Mr. Ridgway, would you begin reading with the sentence that begins, "The remaining approximately 42 percent . . ." A. (Reading) "The remaining approximately 42 percent of the gas from the well is not so committed and Transco was unwilling to accept the commitment of any working interest owner's share thereof absent an agreement to amend said contract to include language which would allow Transco, at its option, to reduce the price payable thereunder so as to assure competitiveness in their marketing areas."

Q. Let me stop you for just a minute. When it refers to "the well" was it referring to the Willoughby Well? A. The Number 1 Willoughby 3-5.

Q. Would you continue with the next sentence, please?

BY MR. STEWART:

Mr. Chairman, I think the letter pretty much speaks for itself.

[149] BY MR. TAYLOR:

Mr. Chairman, my only point is that this is a lot of paper to put before the Board and I'm just trying to pull out the relevant portions of the letter and move on.

BY CHAIRMAN FANCHER:

All right, sir.

BY MR. STEWART:

If he could just highlight those portions and present them to the Board, that would be fine with us.

BY CHAIRMAN FANCHER:

I think he could do that, but we will give him reasonable latitude to proceed with the information.

BY MR. TAYLOR:

Q. Now, Mr. Ridgway, would you read the next sentence? A. (Reading) "This condition was unacceptable to the working interest owners who have ratified the Getty/Transco contract and Transco has verbally indicated that they intend to limit their takes to the gas which is attributable to the leases acquired from Getty."

Q. Now, would you go to what appears to be the last paragraph on that page and read the next to the last sentence? A. (Reading) "If you have made no such arrangements to the extent the production is not curtailed by Transco, we plan to disburse to you, so long as your gas remains uncommitted, [150] your pro rata of the proceeds we receive from Transco."

Q. What did you do in response to this letter? A. I signed a letter authorizing Tomlinson to market my share of gas under the terms of their Operating Agreement and contract.

Q. After you received what has been marked as Exhibits 8 and 9, did you contact Transco about that? A. Yes, I communicated directly with Transco requesting to become a party to the gas purchase contract and to ratify the same.

Q. What did Transco tell you? A. Transco indicated to me that they would not allow me to do that.

Q. Did Transco at that point offer you a contract for your gas? A. They did not offer me a contract at that

time; however, they did say that if there was a contract available it would be subject to what is termed the market out provision and a present price of five dollars a thousand.

Q. What was your understanding of how Transco and the operators proposed not to produce your share of gas but yet continued to produce the wells? A. My understanding is the way they termed it, it would be deferred or banked or left in the ground until some undetermined later date.

[151] Q. Mr. Ridgway, since the filing of this petition, have you received additional notices from Getty and Tomlinson confirming that Transco proposes not to take your gas? A. Yes, I received a copy of this letter dated August 23, 1982 from Getty confirming this.

BY MR. TAYLOR:

Mr. Chairman, we would offer as Exhibit 10 a copy of the letter of August 23, 1982, on Getty letterhead addressed to Coastal Exploration, Inc.

BY CHAIRMAN FANCHER:

Let it be marked.

(THE LETTER OF AUGUST 23, 1985, FROM GETTY TO COASTAL WAS MARKED AS EXHIBIT 10 TO THE TESTIMONY OF MR. RIDGWAY AND APPEARS AS FOLLOWS:)

Exhibit 10

GETTY

Getty Oil Company
Post Office Box 1404, Houston, Texas 77251
Telephone (713) 651-5000

Natural Gas Sales and Purchases

HOUSTON, TEXAS
AUGUST 23, 1982

TO ALL WORKING INTEREST OWNERS
IN GETTY OIL COMPANY - OPERATED
WELLS IN NEWSOM FIELD,
MARION COUNTY, MISSISSIPPI
Buckley 33-6 No. 1
Dawson 33-14 No. 1
Rogers 28-11 No. 1
Morgan 9-14 No. 1
Sipp 20-9 No. 2

Gentlemen:

In Getty Oil Company's (Getty) letter of June 17, 1982, we informed you of Transcontinental Gas Pipeline Corporation's (Transco) refusal to purchase gas of non-signatory parties to Gas Purchase Contracts with Transco. Previously, Transco had purchased such parties' gas which Getty had tendered to Transco under the terms of various operating agreements. Coastal Exploration, Inc., a non-signatory party who received this notice, has petitioned the Mississippi Oil and Gas Board under Docket Nos. 287-82-418 and 287-82-467 to enter an order under its Rule 48 for Transco to take ratably from all producers in the field without discrimination. At Transco's request, a hearing on August 18, 1982 was postponed until September 14, 1982 at which time the cause is due to go forward and evidence is scheduled to be heard.

Transco has curtailed its purchase of gas under Getty's Gas Purchase Contract and regretably, more curtailment may occur in the future. Transco has done so despite the fact that Getty has repeatedly requested that Transco refrain from such action until the Mississippi Oil and Gas Board has ruled on the above mentioned docketed cases. In an effort to reduce the hardship to those non-operators who have not been able to arrange a market for their gas, Getty will distribute to all working interest owners on a pro rata basis the revenues attributable to production for the month of July. This course of action is being embarked upon even though it is detrimental to and creates a hardship on Getty.

Very truly yours,

GETTY OIL COMPANY

/s/ RAY CORCORAN

Ray Corcoran
Gas Activities Manager

[153] BY MR. TAYLOR:

Q. Mr. Ridgway, would you read the first sentence in the first paragraph? A. (Reading) "In Getty Oil Company's letter of June 17, 1982, we informed you of Transcontinental Gas Pipe Line Corporation's refusal to purchase gas of nonsignatory parties to gas purchase contracts with Transco."

Q. Mr. Ridgway, does that describe you, are you a nonsignatory party to a gas contract? A. Yes, I am a nonsignatory party to the gas purchase contract.

Q. Would you read the first sentence of the second paragraph? A. (Reading) "Transco has curtailed its purchase of gas under Getty's gas purchase contract and regrettably more curtailment may occur in the future."

Q. Mr. Ridgway, I believe you said you also, subsequent to the filing of this petition, received a like notice from Tomlinson. I'm handling you a letter of August 23, 1982, and ask you if you can identify that? A. Yes, I received a copy of this letter dealing with the Willoughby 3-5 Number 1 Well.

BY MR. TAYLOR:

Mr. Chairman, we would offer this into evidence as Exhibit 11.

[154] BY CHAIRMAN FANCHER:

All right, sir.

BY MR. STEWART:

Mr. Chairman, we have not been provided with a copy of this letter, if I could take a moment to look at it.

BY CHAIRMAN FANCHER:

All right. (OFF THE RECORD BRIEFLY.) Do you have any objection, Mr. Stewart?

BY MR. STEWART:

No.

BY CHAIRMAN FANCHER:

Let it be marked.

(THE LETTER DATED AUGUST 23, 1982, FROM TOMLINSON TO COASTAL WAS MARKED EXHIBIT 11 TO THE TESTIMONY OF MR. RIDGWAY AND APPEARS AS FOLLOWS:)

Exhibit 11

TOMLINSON INTERESTS, INC.

925 Houston Natural Gas Building
Houston, Texas 77002
713-651-9701

Jim S. Denson, Jr.
Manager
Natural Gas Department

August 23, 1982

WORKING INTEREST OWNERS

F. W. Willoughby 3-5 No. 1 Well
E. Morgantown Field, Marion County, Mississippi

Attached, for your information, is a copy of a letter dated August 19, 1982 from Transcontinental Gas Pipe Line Corporation wherein they notify Tomlinson Interests, Inc., operator of the subject well, that, effective August 19, 1982, they will only take production attributable to the pro rata working interests of those working interest owners who are signatories to that certain gas purchase contract dated April 15, 1982 between said owners and Transcontinental, and that until further notice they will not accept any gas being sold by Tomlinson Interests, Inc. under the operating agreement covering said well. As you will recall, only about 58% of the gas from this well is committed to Transcontinental, such gas being attributable to leases acquired from Getty Oil Company.

Interests in this gas which are attributable to leases other than those acquired from Getty are either committed to Tennessee Gas Pipeline Company or are uncommitted. In the latter instance, uncommitted gas (including Tomlinson Interests' share thereof) is being delivered to Transcontinental under the terms of that certain operating agreement dated October 1, 1981. Tennessee Gas has not con-

nected this well to its system as yet and, thus, is not in position to accept any deliveries.

Although the petition filed July 24, 1982 with the Mississippi Oil & Gas Board by Coastal Exploration, Inc. (Docket No. 287-82-418 and Docket No. 287-82-467), wherein the Board has been asked to required Transcontinental to take gas from this and other wells ratably, may impact Transcontinental's decision in this instance, Tomlinson Interests is prepared to continue to accomodate those working interest owners wishing us to market their gas under the terms of the aforesaid operating agreement—to the extent we can do so contractually. You should be aware that, notwithstanding Transcontinental's notice that they will not accept gas sold by the operator under the operating agreement, our gas purchase contract specifically obligates them to purchase at least 50% of any "excess gas" available to us during October 1 – May 1 each year under a gas balancing agreement or other similar agreement. Moreover, under the terms of our contract, Transcontinental must increase their takes for such time and in such amount as is necessary to offset drainage: The subject well is completed in the Harper Sand which is being drained by other production, as quickly as we are able to document the extent of such drainage we intend to request Transcontinental to increase their takes accordingly.

We will use our best efforts to keep you apprised of the developments regarding this situation. In the meantime, should you have any questions, please contact me.

Sincerely,

TOMLINSON INTERESTS, INC.

Original Signed:
Jim S. Denison, Jr.

Jim S. Denison, Jr.
Manager, Natural Gas Department

cc: Mr. Toxey M. Puckett
Tomlinson Interests, Inc.
111 Capitol Building, Suite 290
111 East Capital Street
Jackson, Mississippi 39201

Mr. Vernon L. Terrell, Jr., Esquire
Plauche, Hartley, Lapeyre & Ottinger
One Shell Square, Suite 3618
New Orleans, Louisiana 70139

Mr. Tom Graves
Tomlinson Interests, Inc.
925 Houston Natural Gas Building
Houston, Texas 77002

Transcontinental Gas
Pipe Line Corporation

A Subsidiary of Transco Companies Inc.

2700 Post Oak Boulevard
P. O. Box 1396
Houston, Texas 77001
713-871-8000

August 19, 1982

Tomlinson Interests, Inc.
925 Houston Natural Gas Building
Houston, Texas 77002

Attention: Mr. Jim S. Denison

Re: Transco's Gas Purchase Agreement #06991—Newsom Field, Marion County, Mississippi (F. W. Willoughby 3-5 Well)

Gentlemen:

This is to advise you that effective immediately, Transcontinental Gas Pipe Line Corporation (Transco) requests that until further notice, gas deliveries from the subject well in the subject field operated by Tomlinson Interests, Inc., and committed under Transco's gas purchase agreement with Tomlinson Interests, Inc., Albert F. Thomasson, Burgess A. Thomasson, Viking Petroleum, Inc., Gasex, Ltd., Resources Investment Corp., Argo Petroleum, Horton Petroleum Corporation, Jack McCunn, Cameron L. Cox, Jack Spottswood and Charles G. Gates be reduced to contract minimum quantities as set out in Section 2 of Article V of the contract, attributable to the working interest committed to Transco.

Effective August 19, 1982 Transco will only take production attributable to the pro rata working interest of the above-named signatory parties as defined in Section 4 of

Article V, and until further notice will no longer accept any gas being sold by the operator under the operating agreement.

This action is being taken because the volume of gas which is currently available for delivery to Transco under its existing gas purchase agreements substantially exceeds the demand for gas in our market area. Also, the decline in oil and other fuel prices, coupled with increasing gas purchase costs, has resulted in the loss of some industrial market in the areas served by Transco's system. It is anticipated that this situation will result in additional market loss by certain of our distribution customers. Transco must, therefore, take measures such as this to reduce our takes in fields where we are currently taking more gas than is dedicated under contract. Similar notices containing this request have been given by Transco in all instances where permitted by contract.

Should you have any questions, please call Ms. Trisha S. Pollard at 713/871-2552.

Very truly yours,

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

/s/ J. PHIL MCGOWAN, JR.
J. Phil McGowan, Jr.
Vice President – Gas Purchases

JPMc:TSP:jmf

cc: see attached list

[159] BY MR. TAYLOR:

Q. Mr. Ridgway, I believe that what has been marked as Exhibit 11 has attached to it a copy of a letter of August 19, 1982, from Transco to Tomlinson, is that correct? A. That is correct.

Q. And it references the Willoughby Well? A. Yes, it does.

Q. For the record, would you read the second paragraph on page 1 of the letter of August 19, 1982, from Transco to Tomlinson. A. (Reading) "Effective August 19, 1982, Transco will only take production attributable to the pro rata working interests of the above named signatory parties as defined in Section 4 of Article 5, and until further notice will no longer accept any gas being sold by the operator under the Operating Agreement."

Q. Are you one of the above named signatory parties that refers to? A. No, I am not.

Q. Are you in the category of a person whose gas was being being sold under the Operating Agreement? A. That is correct.

Q. Will you turn to the first page of Exhibit 11 and read the first sentence in the first paragraph? A. (Reading) "Attached for your information is a copy [160] of a letter dated August 19, 1982, from Transcontinental Gas Pipe Line Corporation wherein they notify Tomlinson Interests, Inc., operators of subject well, that effective August 19, 1982, they will only take production attributable to the pro rata working interest of those working interest owners who are signatories to that certain gas purchase contract dated April 15, 1982, between said owners and Transcontinental, and that until further notice they will not accept any gas being sold by Tomlinson Interests, Inc. under the Operating Agreement covering said well."

Q. It refers to a gas purchase contract of April 15, 1982, are you a party to that contract? A. No, I am not.

Q. That is the contract, which has been introduced and marked as Exhibit 6. Mr. Ridgway, after receiving the good news from Transco, what efforts did you make to obtain a market for your gas produced from these wells? A. After I had received——

Q. The notice that Transco proposed not to take your gas, what efforts, if any, did you make to obtain another market for your gas? A. I made an effort to check to see if there were other marekts in the field area and contacted the one that was the most prominent, appearing to be a possible market and that was Tennessee Gas, whose agent is Mr. Charles Wilkerson from Columbia, Mississippi.

[161] Q. Were you able to obtain another market for your gas? A. No, I was not.

Q. After this petition was filed, I believe you receive an offer from Transco to purchase your gas produced from the——

BY CHAIRMAN FANCHER:

Mr. Taylor, I hate to interrupt you, but I think you are getting way out of the area of Rule 48. Rule 48 says anybody purchasing gas or oil from a common source of supply shall purchase ratably and without discrimination. I don't know why we need to get into whether or not there is another market available.

BY MR. TAYLOR:

I'm just attempting to show for the record the good faith efforts my client has made to try to obtain another market.

BY CHAIRMAN FANCHER:

Okay, sir.

BY MR. TAYLOR:

Q. Now, Mr. Ridgway, after the petition was filed in this docket, Transco made an offer to you to buy your gas, didn't they? A. Yes, they did.

Q. I show you this letter of July 1, 1982, and ask you if you can identify it. [162] A. (Examines letter) Yes, I received a copy of this letter.

Q. It's from Transcontinental Pipe Line Corporation, is it not? A. Yes.

BY MR. TAYLOR:

Mr. Chairman, we would offer this into evidence as Exhibit 12.

BY CHAIRMAN FANCHER:

Mr. Stewart?

BY MR. STEWART:

No objection.

BY CHAIRMAN FANCHER:

All right, let it be marked.

(THE LETTER OF JULY 1, 1982, FROM TRANSCO TO COASTAL WAS MARKED AS EXHIBIT 12 TO THE TESTIMONY OF MR. RIDGWAY AND APPEARS AS FOLLOWS:)

Exhibit 12

Transcontinental Gas
Pipe Line Corporation

A Subsidiary of Transco Companies Inc.

2700 Post Oak Boulevard
P.O. Box 1396
Houston, Texas 77001
713-871-8000

July 1, 1982

Coastal Exploration, Inc.
P. O. Box 387
Jackson, Mississippi
–Attn: Mr. Julius Ridgway

TO ALL WORKING INTEREST OWNERS
IN GETTY OIL COMPANY - OPERATED
WELLS IN NEWSOM FIELD,
MARION COUNTY, MISSISSIPPI
BUCKLEY 33-6 No. 1
DAWSON 33-14 No. 1
ROGERS 28-11 No. 1
MORGAN 9-14 No. 1
SIPP 20-9 No. 2

Gentlemen:

You were advised by Getty Oil Company's (Getty) letter of June 17, 1982 that Transcontinental Gas Pipe Line Corporation (Transco) was, effective July 1, 1982, no longer accepting deliveries of gas being marketed by Getty, as operator under the operating agreement(s).

Getty's letter recommended that you make arrangements to contract your share of gas production, because your share would be deferred or under-produced effective July 1.

A number of you have contacted Transco requesting a contract under which to market your share of gas.

The volume of gas which is currently available for delivery to Transco under its existing gas purchase agreements substantially exceeds the demand for gas in Transco's market areas. Consequently, Transco is not currently submitting offers for deregulated gas without "market-out" clauses. However, it is not Transco's intention to leave the owners of small working interests without a market for its gas. Accordingly, Transco is offering to pay you, effective July 1, 1982 and until you are notified further, a price of $5.00 per MMBTU, inclusive of tax reimbursement and all other adjustments. If, in Transco's sole opinion, this price is later determined by Transco to be uneconomic, Transco has the right to notify you of such determination and of the economic price Transco is willing to pay you for the gas. The price contained in such notice shall be effective as of the date specified in the notice. Should you elect to terminate this agreement, you shall have up to, but not more than thirty (30) days from the date of our notice to notify Transco in writing of such election to terminate this agreement. If you elect to terminate within this thirty (30) day period, you shall have an additional sixty (60) day period from the date of your election, in which to effectuate sale of gas covered hereunder to another purchaser; after which sixty (60) day period this agreement is terminated. During the sixty (60) day period, Transco will pay you the price contained in its notification. In the event you elect to terminate this agreement, you agree that you will not sell to a third-party purchaser at a price equal to or less than the price contained in Transco's notification. You will have no obligation to refund any of the price received for your gas prior to termination of this agreement. If, under gas purchase agreements which contain similar provisions as the above, Transco should increase this price, the price under this agreement shall be increased accordingly.

This offer is being made subject to one condition. Transco requires that one (1) representative among you be appointed for purposes of receiving notices under this agreement.

The foregoing summarizes Transco's offer to purchase gas, regarding pricing. All other relevant terms and conditions affecting this sale and purchase of gas shall be in accordance with the Transco-Getty gas purchase agreement dated August 6, 1980, covering gas produced from the Newsom Field, Marion County, Mississippi, including but not limited to, provisions pertaining to quantity and quality.

If our offer is acceptable to you, and you desire to ratify the August 6, 1980 gas purchase agreement between Transco and Getty, please sign this letter in the space provided below, retain one (1) copy and return one (1) copy to Transco by August 31, 1982.

Should Transco's offer to purchase your gas not be acceptable to you, please be advised that Transco would be agreeable to entering into a transportation agreement with any third-party purchaser with whom you conclude an agreement for the disposition of your gas, so long as such third-party purchaser is operationally able to accept the gas from Transco's system, which operate at pressures somewhat lower than other pipelines. Further, such transportation would be at no cost, risk or expense to Transco, so long as capacity is available in Transco's system, and so long as such transportation does not involve a forward haul on Transco's main line system. Transco would transport this gas under the same quality specifications as are contained in its contract with Getty, which obligates Transco to accept gas from Getty containing up to 8% CO_2 from any given well, but an average from all of the Getty wells of no more than 6% CO_2. Should you elect to sell your gas to another purchaser, we would appreciate your notify-

ing us of those marketing arrangements, so that we can implement the transportation service.

Very truly yours,

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

/s/ J. PHIL MCGOWAN, JR.
J. Phil McGowan, Jr.
Vice President – Gas Purchases

JPMc:TSP:lkk

ACCEPTED and AGREED to this

_____ day of _____, 1982

_____

COMPANY NAME (if any)

By _____

PLEASE PRINT OR TYPE THE NAME OF EACH SIGNATORY PARTY IMMEDIATELY BELOW EACH SIGNATURE.

[166] BY MR. TAYLOR:

Q. Mr. Ridgway, Exhibit 12 is dated July 1, 1982, did you receive it on or about that date? A. No, I received it on or about the first week in August.

Q. And I believe that it is addressed to the Sipp and Rogers Well that you own an interest in, as well as other Getty operated wells? A. That is correct.

Q. Did you receive another letter from Transco after this letter offering to buy your gas in the Willoughby Well? A. Yes, I did.

Q. I show you this letter dated September 2, 1982, and ask if you can identify that? A. (Examines letter) Yes, this is a copy of the letter I received.

Q. And it is on the letterhead of Transco? A. That's correct.

BY MR. TAYLOR:

Mr. Chairman, we would offer this into evidence as Exhibit 13.

BY CHAIRMAN FANCHER:

Hearing no objection, let it be marked

(THE LETTER OF SEPTEMBER 2, 1982, FROM TRANSCO TO COASTAL WAS MARKED AS EXHIBIT 13 TO THE TESTIMONY OF MR. RIDGWAY AND APPEARS AS FOLLOWS:)

Exhibit 13

Transcontinental Gas
Pipe Line Corporation

A Subsidiary of Transco Companies Inc.

2700 Post Oak Boulevard
P. O. Box 1396
Houston, Texas 77001
713-871-8000

September 2, 1982

TO: All Working Interest Owners in Tomlinson Interests, Inc. – Operated Well in Newsom Field, Marion County, Mississippi – Willoughby 3-5 No. 1

Gentlemen:

We understand you were advised by Tomlinson Interests, Inc. (Tomlinson) that Transcontinental Gas Pipe Line Corporation (Transco) was, effective August 19, 1982, no longer accepting deliveries of gas being marketed by Tomlinson that are not dedicated to Transco by contract.

The volume of gas which is currently available for delivery to Transco under its existing gas purchase agreements substantially exceeds the demand for gas in Transco's market areas. Consequently, Transco is not currently submitting offers for deregulated gas without "market-out" clauses. However, it is not Transco's intention to leave the owners of working interests in the subject well without a market for all of their gas. Therefore, Transco hereby offers to pay you, effective October 1, 1982 and until you are notified further, a price of $5.00 per MMBTU, inclusive of tax reimbursement and all other adjustments for all gas not presently committed or dedicated by contract. If, in Transco's sole opinion, this price is later determined by Transco to be uneconomic, Transco has the right to notify

you of such determination and of the economic price Transco is willing to pay you for the gas. The price contained in such notice shall be effective as of the date specified in the notice. In the event of such determination you have the right to elect to terminate this agreement. You shall have up to, but not more than thirty (30) days from the date of our notice to notify Transco in writing of such election to terminate this agreement. If you elect to terminate within this thirty (30) day period, you shall have an additional sixty (60) day period from the date of your election, in which to effectuate sale of gas covered hereunder to another purchaser; after which sixty (60) day period this agreement is terminated. During the sixty (60) day period, Transco will pay you the price contained in its notification. In the event you elect to terminate this agreement, you agree that you will not sell to a third-party purchaser at a price equal to or less than the price contained in Transco's notification. You will have no obligation to refund any of the price received for your gas prior to termination of this agreement. If, under gas purchase agreements which contain similar provisions as the above, Transco should increase this price, the price under this agreement shall be increased accordingly.

This offer to purchase your uncommitted gas is being made subject to one condition. Transco requires that one (1) representative among you to be appointed for purposes of receiving notices under this agreement.

The foregoing summarizes Transco's offer to purchase your uncommitted gas, regarding pricing. All other relevant terms and conditions affecting this sale and purchase of gas shall be in accordance with the Transco-Tomlinson gas purchase agreement dated April 15, 1982, covering gas produced from the Newsom Field, Marion County, Mississippi, including but not limited to, provisions pertaining to quantity and quality.

If our offer is acceptable to you, and you desire to ratify the above-described April 15, 1982 gas purchase agreement, as amended, for your uncommitted gas, please sign all three (3) copies of this letter in the space provided below, retain one (1) copy and return two (2) copies to Transco. THIS OFFER EXPIRES SEPTEMBER 30, 1982.

Should Transco's offer to purchase your gas not be acceptable to you, please be advised that Transco would be agreeable to entering into a transportation agreement with any third-party purchaser with whom you conclude an agreement for the disposition of your gas, so long as such third-party purchaser is operationally able to accept the gas from Transco's system, which operates at pressures somewhat lower than other pipelines. Further, such transportation would be at no cost, risk or expense to Transco, so long as capacity is available in Transco's system, and so long as such transportation does not involve a forward haul on Transco's main line system. Transco would transport this gas under the same quality specifications as are contained in its contract with Tomlinson which obligate Transco to accept gas from Tomlinson containing up to 8% CO_2 from any given well, but an average from Tomlinson's well(s) of no more than 6% CO_2. Should you elect to sell your gas to another purchaser, we would appreciate your notifying us of those marketing arrangements, so that we can implement the transportation service.

Very truly yours,

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

/s/ J. PHIL MCGOWAN, JR.
J. Phil McGowan, Jr.
Vice President – Gas Purchases

JPM:QGG:nw

ACCEPTED and AGREED to this

____ day of _____, 1982

_____

COMPANY NAME (if any)

By _____

PLEASE PRINT OR TYPE THE NAME OF EACH SIGNATORY PARTY IMMEDIATELY BELOW EACH SIGNATURE.

[169] BY MR. TAYLOR:

Q. Mr. Ridgway, can you tell the Board your understanding of the offer made to you by Transco by Exhibits 12 and 13?

BY MR. STEWART:

Mr. Chairman, again, the letters speak for themselves.

BY CHAIRMAN FANCHER:

Well, it's a little argumentative, Mr. Stewart, but maybe he won't argue so long after the hearing if we let him kind of explain the contents in the letters.

BY MR. STEWART:

I just want equal time, that's all.

BY CHAIRMAN FANCHER:

Okay.

BY MR. TAYLOR:

Q. Mr. Ridgway, without reading the two letters word for word, would you tell the Board what your understanding is of the offer Transco made to you after this petition was filed? A. Well, my understanding is that they are making an offer which is substantially less than the price which I had been receiving from them by selling my gas through the operator under their contract. I was shocked by this discrimination that apparently they were meting out on the small working interest owners.

[170] Q. What differences, if any, are there in the price Transco proposes to pay you as opposed to the price paid to the operator? A. I believe that the price that Getty——

BY CHAIRMAN FANCHER:

You believe, or do you know, Mr. Ridgway?

A. I know, but I leave room for some doubt as to the percentage. It is about $7.90 a million for the gas we are receiving under the Getty contract. This contract, or this offer to purchase calls for $5.00 per million BTU.

Q. Are there any other differences in the basis on which they propose to buy your gas as opposed to the operator's? A. My understanding is that there is one primary difference in that any future contract would provide for the market out provision, which is not included in the Getty contract under which we have been selling.

Q. What do you mean by market out provision? A. The market out provision is a provision within the contract that enables the purchaser to arbitrarily roll back the price from the price at which they are purchasing to a price level at which they deem to be proper under the times and conditions.

Q. Mr. Ridgway, have you accepted the offer which Transco extended to you in Exhibits 12 and 13? A. No, I have not.

[171] Q. Why not? A. I believe I'm entitled to the same terms and conditions that I have been selling under the Getty contract.

Q. On the other wells that you own an interest in the Hosston trend, I believe you described them as 14 wells outside these four, on what basis is Transco purchasing the gas from those wells? A. They are purchasing my gas on the same terms and conditions that they purchase from the operator.

Q. What other times in which you have been involved in oil and gas business have you been involved in a situation where the gas purchaser offered different prices to different owners in the same wells? A. I believe this is the first occasion that I have run across of this nature.

Q. Mr. Ridgway, based on your study of the geology and the drainage patterns between the developed units, do you have an opinion as to whether Transco's failure to purchase your gas will result in nonuniform, disproportionate, or unratable withdrawals from the common pool which will cause undue drainage between developed tracts and which result in some owners recovering more than their fair and equitable share? Do you have an opinion? A. Yes, I do have an opinion.

Q. What is that opinion? A. I believe that—my opinion is that there is a disparity created when the condition that exists where the [172] Barnes 29-1, the Carlisle 4-2 and the Buckley 33-6, continue to produce at the maximum efficient rate and the wells which Coastal has an interest in that the production is going to be deferred, being the Rogers 28-11, the Sipp 20-9 Number 2, and the Willoughby 3-5 Number 1, if the production is reduced from these wells, that a disparity is created in relationship to the maximum efficient rate and which will cause drainage to occur and the waste that is connected with drainage. And because of this you will get disproportionate, nonuniform withdrawal, which will result in abuses to the rights of owners, such as Coastal, to market and share its part of the production which will deny us the right to get our just and equitable share of the production.

Q. You mentioned the Barnes Well, do you own an interest in the Florida-Barnes? A. Yes, I do.

Q. Has Transco proposed to take your share of gas produced from the Barnes Well? A. Yes.

Q. As well as all the other working interest owners? A. That's my understanding.

Q. And that would also be the situation for the Florida-Carlisle Well? A. That's correct.

Q. In your opinion will Transco's failure to take [173] your gas, your share of production from the Sipp, Rogers

and Willoughby Wells, result in the abuse of your correlative rights in the common pool? A. Yes, I believe that will occur.

Q. What effect, if any, will there be on the dissipation of reservoir energy and your opportunity to recover your share of gas? A. Well, Coastal, as the result of the dissipation of reservoir energy, will never be able to regain the lost pressure that occurred due to the continued production. And the reservoir energy or pressure will be dissipated to the owners of the banked or the deferred gas, as gas pressures normally decline with continued production. That will result in a nonuniform withdrawal from the common pool for the benefit of the operator and the signatory parties and to the disadvantage of the nonsignatory parties that will be having their gas deferred or left in the ground.

Q. Mr. Ridgway, in your opinion if Transco fails to take your share of gas or purchase it, will waste result? A. Yes, it will.

Q. It's your belief that Transco's proposal to buy your gas at $5.00 MMBTU is discriminatory in favor of the other owners and operators in the common pool? A. It definitely is.

BY MR. TAYLOR:

That's all of the questions we have of this witness.

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[200] CROSS EXAMINATION

BY MR. STEWART:

Q. Mr. Ridgway, when did you first find out that Transcontinental Gas Pipe Line Company was going to buy gas from Getty Oil Company in the Rogers, Sipp and Willoughby Wells? A. I don't know the actual time. It was by

virtue of a letter that I received from Getty as—at first I received a request from a representative of Getty to buy my production and I responded to that requesting certain information regarding that. Then I received a letter from Mr. Andrews indicating that they were entering into a gas purchase contract with Transcontinental and indicated a price.

Q. Would this be that letter? A. (Examines) This is the letter from Mr. Andrews, yes, dated July 9, 1980.

Q. That is over two years ago, is that correct? A. Yes, it is.

Q. Do you know in relationship to the drilling of these wells whether or not this was before any production from these wells that are located in this common source of supply? A. It was substantially before that.

Q. Did you receive a letter from Getty Oil Company shortly after this letter indicating that if you had not made your own arrangements with regard to the selling of your share of the gas that they would sell it for you under the terms and conditions of the Operating Agreement with respect to the [201] Rogers Well? A. Yes, I did.

Q. I'm going to ask you if this is a copy of that letter? A. This is a copy of one letter. I received two requests from Getty, one from one office and another one from another office.

Q. I think that is the wrong letter. Let me ask you if this is the letter. A. (Examines) That is one letter—I received this letter, yes.

Q. Did you reply to this letter with respect to the Rogers Well that you would be willing for them to sell your gas under the terms and conditions of the Operating Agreement? A. I believe I wrote them back and asked them to send me a copy of the gas purchase contract so that I might ascertain the terms and conditions of that contract and

indicated that I wanted them to sell my gas under that, subject to approval of it.

Q. This is Getty Oil Company? A. That is Getty Oil Company, right.

Q. And Getty sent you a copy of the contract? A. They did send me a copy of the contract.

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[211] BY MR. STEWART:

Q. Mr. Ridgway, referring you back to the letter of July 9, 1980, which you said was the first indication that you received that Transcontinental Gas Pipe Line would be purchasing Getty Oil Company—you did identify the receipt of that letter? A. Yes, and I'm not sure it was the first indication, but it was one of the earliest and I believe that was the correspondence that I received.

BY MR. TAYLOR:

May the record reflect that the petitioner, Coastal, has a continuing objection as to this line of inquiry and the documents that Mr. Stewart is handing to the witness.

BY CHAIRMAN FANCHER:

All right, sir.

BY MR. STEWART:

Let me introduce that as cross examination exhibit 1

BY CHAIRMAN FANCHER:

All right, let it be marked for the record.

(THE LETTER OF JULY 9, 1980, WAS MARKED AS EXHIBIT 1 TO THE CROSS EXAMINATION OF MR. RIDGWAY, FOR THE RECORD ONLY, AND APPEARS AS FOLLOWS:)

Exhibit 1

GETTY

Getty Oil Company

P.O. Box 53386, New Orleans, Louisiana 70153
Telephone (504) 524-4861

Southern Exploration and Production Division
J. P. Richards—Production Manager New Orleans District

July 9, 1980

Mr. Julius M. Ridgway
P. O. Box 367
Jackson, Mississippi 39205

Re: Gas Sales
Marion County, Mississippi

Dear Sir:

Getty Oil Company is presently negotiating a contract with Transcontinental Gas Pipeline Company for sale of gas from the Greens Creek—East Morgantown Fields. The contract should be executed within the next month.

Sales from the field should start in October, 1980. The price to be received for the gas will depend on inflation escalation factors. It is estimated that the price will be approximately $5.07 per MMBTU.

Yours very truly,

GETTY OIL COMPANY

/s/ H. R. Andrew
H. R. Andrew
District Prod. Mgr.

HRA/ngr

[213] BY MR. STEWART:

Q. What is the price reflected in that letter for the sale of gas at that time, Mr. Ridgway? A. It was recited as being in excess of $5.00, which was considerably above the price indicated by the other representative of Getty.

Q. This was $5.07 per MCF, is that correct? A. That's right.

Q. And all of your correspondence and communications with regard to the sale of this gas was with Getty Oil Company, was it no? A. Except for my first telephone inquiry with Transcontinental, trying to get a copy of the gas purchase agreement between Transco and Getty, and I was denied access to that contract and was told I would have to contact Getty for that.

Q. Transcontinental Gas Pipe Line did eventually send you a copy of that contract, did it not? A. I forget which one it was, but they requested I get approval from Getty before it was done.

Q. So, they didn't deny it, they asked that you get approval, did they not? A. Well, it was in a way a denial.

Q. And you did receive a copy, did you not? A. Yes. That's right, it was from Transcontinental.

Q. And it was sent to you from Transcontinental Gas Pipe Line Company, was it not? [214] A. Yes.

Q. And you did receive a copy, did you not? A. Yes, it was from Transcontinental.

Q. With the exception of that, the request for the copy of the contract, all of your communications were with Getty Oil Company with regard to the sale of your gas, was it not? A. That's right.

Q. And you did not ask Transco to contract with you to purchase your gas until in May or June of 1982 when you

asked to ratify the Getty contract? A. That's correct, neither did they request me to ratify or be a party to a contract.

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Excerpts from the testimony of Gerald Brautigam

[272] DIRECT EXAMINATION

BY MR. WATTERS:

Q. Would you please state your name and place of residence for the record? A. My name is Gerald Brautigam and I live in Kenner, Louisiana.

Q. By whom are you employed and in what capacity? A. I am employed by Getty Oil Company as a petroleum geologist.

Q. Have you previously testified before this Board as an expert in petroleum geology and were your qualifications accepted at that time? A. Yes, I have, and they were.

Q. Are you generally familiar with the Statewide Rules and the Special Field Rules for the Greens Creek Field and for the East Morgantown Field? A. Yes, I am.

BY MR. WATTERS:

I would like to submit the qualifications of Mr. Brautigam as an expert in petroleum geology.

BY CHAIRMAN FANCHER:

All right, let the record show the qualifications of Mr. Brautigam are accepted.

[273] Q. Have you made a study of the Greens Creek Field and East Morgantown Field in Jefferson Davis and Marion Counties, Mississippi? A. Yes, I have.

Q. Have you prepared or had prepared under your supervision and control any exhibits in connection with your testimony? A. Yes, I have prepared two exhibits. The first exhibit is a structure map contoured on top of the Harper Sand, that's for the Greens Creek and East Morgantown Fields. The second exhibit is a total sand isopach map of the Harper Sand for Greens Creek and East Morgantown Fields.

Q. Do these two exhibits accurately portray the matters which they purport to protray? A. Yes, they do.

BY MR. WATTERS:

I would like to introduce Exhibits 1 and 2 to the testimony of Mr. Brautigam.

BY CHAIRMAN FANCHER:

All right, sir, let them be marked.

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[274] BY MR. WATTERS:

Q. Would you please refer to your first—by the way, we have a third exhibit in here but that will be introduced through our engineer later.

BY CHAIRMAN FANCHER:

All right, sir.

Q. (Mr. Watters) Would you please refer to your first exhibit and explain what is shown on that exhibit? A. My first exhibit is a structure map of Greens Creek and East Morgantown Fields contoured on top of the Harper Sand. As you can see in the legion the red squares show proposed well locations; the red half squares indicate currently drilling wells. The green circles indicate wells that are completed in the Harper Sand Gas Pool. And the green semi-circles indicate wells that have tested the Harper Sand Gas Pool but were not completed in that reservoir. The field outline for Greens Creek and East Morgantown Fields are indicated by the red and blue lines, respectively. The contour interval on this map is 100 feet. The scale is one inch equals 2,000 feet. Basically, this exhibit shows that Greens Creek and East Morgantown Fields are a group of structural highs located on the upthrown eastern side of a sinuous down to the west normal fault that trends generally north/northwest to south/southeast.

Closure of these structures, enclosure up against the fault, are the trapping mechanisms for the hydrocarbons that are produced at Greens Creek Field and East Morgantown Field.

[275] Q. Are the reservoir limits for the Harper Sand Gas pool depicted on this exhibit? A. Yes, they are. The western and southern limits of the Harper Sand Gas Pool are defined by the fault, which is depicted on this map as the parallel sinuous lines with a little black triangular symbols or teeth marks. These symbols indicate the down-thrown side of the fault. The northern and eastern limits of the Harper Sand Gas Pool are defined by a combination of gas/water contacts, lowest known gas levels and highest known water levels as seen in various wells throughout the fields. This is shown by the dashed black line production limit.

Q. Would you please refer now to your second exhibit and explain what is shown on this exhibit? A. The second exhibit is a sand isopach map of Greens Creek/East Morgantown Field Area. As on the previous exhibit, the red squares show proposed well locations, the red half squares show currently drilling wells. Here the green circles denote wells which were drilled through and electrically logged through the Harper Sand Gas Pool. Again, the red and blue lines show the field outline for Greens Creek and East Morgantown Fields respectively. The contour interval is 10 feet and the scale is one inch equals 2,000 feet. This exhibit shows that the Harper Sand is a continuous sand body throughout these two fields. Sand thickness in the two fields is generally [276] greater than 20 feet and commonly exceeds 40 feet. No shaleouts can be seen or evidenced.

Q. In your opinion is the Harper Sand Gas Pool, as seen in Greens Creek Field a part of the same reservoir as the Harper Sand Gas Pool as seen in East Morgantown Field? A. Yes, it is. Geological data show that the Harper Sand

is continuous across both fields. These data suggest that the Harper Sand Gas Pool, as seen in Greens Creek Field and the northern part of East Morgantown Field are actually a single reservoir. Due to an area of low porosity and permeability around the Getty Willoughby 3-11 Well, it is possible that the portion of the Harper Sand south of the Tomlinson Willoughby 3-5 Well is in a separate pool. In addition, the Tomlinson Morgan 21-10 Well and Tomlinson Thornhill Well are on a separate fault block, and therefore, in a separate reservoir from the rest of the East Morgantown wells.

Q. Referring again, Mr. Brautigam, to your first exhibit, which is the structure map, do you see any geological separation in the Harper Sand Gas Pool which separates the Getty Sipp 20-9, the Getty Rogers 28-11 and the Getty Buckley 33-6 Wells, and also, the Tomlinson Willoughby 3-5 Well as other wells completed in the Harper Sand Gas Pool? A. No, other than this area of low porosity and permeability south of the Tomlinson Willoughby 3-5 Well and the fault that separates the Tomlinson Morgan 21-10 Well and the Tomlinson Fortenberry Well. There is no geological evidence [277] separating the rest of these wells in Greens Creek and East Morgantown Field.

Q. In other words, there is no geological feature which would prevent the Harkins Board of Supervisors 16-11 Well in Section 16, the Tomlinson Williamson Well in Section 21, the Florida Exploration Barnes 29-1 Well in Section 29, the Florida Exploration Carlisle 4-2 Well and other wells in the Harper Sand Gas Pool from draining hydrocarbons under the three Getty wells and the Tomlinson Willoughby 3-5 Well in the event the latter wells do not produce in sufficient volumes to offset drainage? A. That is correct. If the three Getty wells and the Tomlinson Willoughby well are not produced at all, in time the other wells that are completed in the pool would significantly drain the unit in which these wells are located. If the production from these four wells is lower than the production

in the surrounding wells to an extent that drainage is not offset by counter-drainage, then these wells will not produce their coequal and correlative share of hydrocarbons from the Harper Sand Gas Pool reservoir.

Q. What do you think is necessary for these wells to produce a share which will enable them to recover sufficient production to protect their coequal and correlative rights of all parties owning an interest in these wells?

Well, in my opinion ratable production based on [278] deliverability is necessary. In other words, if the other wells in the pool are producing at their maximum efficient rate of recovery, then these four wells should also be permitted to produce at their maximum efficient rate of recovery to prevent drainage.

Q. At what depth is the Harper Sand Gas Pool encountered in the Getty Wells? A. As you can see on this Exhibit 1, I have the structure tops on this. It's encountered below a depth of 15,000 feet.

Q. Have these wells been classified as Section 107 wells under the Natural Gas Policy Act of 1978? A. Yes, they have, according to my information.

Q. Do you know whether the other wells shown on your structural exhibit have been classified as Section 107 wells? A. Again, as you can see on Exhibit 1, I have indicated the depth that each well has encountered the Harper Sand Gas Pool. As you can see, all these depths are below 15,000 feet, and accordingly, are entitled to classification as a Section 107 high cost well. It's my information that each of these wells has been classified before this Board as a 107 well.

Q. In your opinion if Transco is not required to take ratably from all wells in the field, would the coequal and correlative rights of all parties owning an interest in this field be protected? A. In my opinion it will not. Without

ratable [279] production there will be undue drainage between the units. As a result, the owners of interests in this units which are subject to this drainage will not be able to receive their fair share of hydrocarbons from the Harper Sand Gas Pool.

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Excerpts from the testimony of James L. Hall

[279]

JAMES L. HALL

Having first been duly sworn by the Chairman, gave the following testimony:

DIRECT EXAMINATION

BY MR. WATTERS:

Q. Would you please state your name and place of residence? A. My name is James L. Hall. I reside in Kenner, Louisiana.

Q. By whom are you employed and in what capacity? A. I'm employed by Getty Oil Company as a reservoir engineer.

Q. Have you previously testified before this Board as an expert in reservoir engineering and were your qualifications accepted at that time? [280] A. Yes, I have, and they were accepted.

Q. Are you generally familiar with the Statewide Field Rules and the Special Field Rules for Greens Creek Field and East Morgantown Field? A. Yes, I am.

BY MR. WATTERS:

I would like to submit the qualifications for Mr. Hall as an expert in reservoir engineering.

BY CHAIRMAN FANCHER:

Let the record show the qualifications of Mr. Hall are accepted.

Q. (Mr. Watters) Have you made a study of the Greens Creek and East Morgantown Fields in Jefferson Davis and Marion Counties, Mississippi? A. Yes, I have.

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[284] Q. From a study of this reservoir, is it your opinion that there is communication between the wells in the Harper Sand Gas Pool in the Greens Creek Field and the Harper Sand Gas Pool in the northern portion of East Morgantown Field? A. Yes, that is my opinion; however, there is insufficient evidence to show that wells in the lower East [285] Morgantown Field are drained by wells in Greens Creek or the northern portion of the East Morgantown Field, meaning the following wells: the Buckley 33-6, the Florida Exploration-Carlisle 4-2, or the Tomlinson Willoughby 3-5.

Q. Is it your opinion if one well were produced in this pool they would cause drainage from the whole pool? A. That is my opinion.

Q. Is it your opinion that if one well produced at its maximum and efficient rate and another well produced below its maximum efficient rate, that the well producing at a higher rate will drain more than its fair share of hydrocarbons from the pool than a well producing at the lower rate? A. In my opinion that will result.

Q. Will the coequal and correlative rights of the owners of interest in a unit in the Greens Creek Field, which is producing at a rate substantially below its MER, receive their fair share of hydrocarbons in a pool if a well on an adjoining tract is producing at a rate near its maximum efficient rate of recovery? A. No, in my opinion they will not, because in this situation there will be undue drainage from the under-produced units to the unit which is producing near its maximum efficiency rate of recovery. In this situation the coequal and correlative rights of the parties in the lower producing unit will not be protected.

[286] Q. Do you recommend that the Board enter an order requiring the purchaser to purchase ratably from all wells in the field? A. Yes, I do. I think this is necessary

to protect the coequal and correlative rights of all parties in the field.

BY MR. WATTERS:

That's all the questions we have.

CROSS EXAMINATION

BY MR. GROWER:

Q. Do you know how many purchasers there are in this area that you have outlined to be all one pool? A. How many purchasers? No, I do not.

Q. If there is more than one purchaser, do you require that all purchasers be required to take ratably?

BY MR. FRANKS:

We object to the question as not being responsive to the petition in this cause which is to determine whether Transco is taking ratably or not without discrimination. If others are not taking ratably, it's possible they might be before this Board, too, but on a subsequent hearing and not today.

BY CHAIRMAN FANCHER:

I have sort of half way taken that position in the past, Mr. Franks, but the way this question was phrased, I think Mr. Grower is entitled to ask that question. There may be some competition between purchasers down there, but still at the [287] same time if somebody is unhappy with the conduct of other purchasers, then they can drag them before the Board.

BY MR. FRANKS:

I don't think that Transco can use what other purchasers are doing as an excuse for not taking ratably without discrimination of the petitioner in this cause. I think they are trying to throw a smoke screen up to the Board so that they can hide what they are doing by what somebody else might be doing, and we object to it for that reason.

BY CHAIRMAN FANCHER:

Well, I'm not so much subject to a smoke screen, Mr. Franks. I think we will let him ask the question.

BY THE WITNESS:

Would you repeat the question?

BY MR. GROWER:

Q. Is it your recommendation that all purchasers in the field should be required to take ratably? A. I would say the wells should be produced ratably.

Q. The wells should be produced ratably—that is what your recommendation really is, is that right? A. That's correct.

Q. Then that can be regulated by the Board by requiring the producers to produce ratably, can't it? A. That's right.

BY CHAIRMAN FANCHER:

How can we do that, Mr. Grower, without field wide unitization?

[288] BY MR. WATTERS:

He is asking a legal question of the witness.

BY CHAIRMAN FANCHER:

Yes, sir, I think so.

BY MR. STEWART:

Mr. Chairman, he just gave his opinion about a legal conclusion.

BY MR. FRANKS:

Mr. Chairman, the Board is under legislative mandate to fix the takes of wells at the maximum efficient rate of each well.

BY MR. GROWER:

Do you want to get into that legal argument now?

BY CHAIRMAN FANCHER:

We will do it later, Mr. Grower.

BY MR. GROWER:

Q. Mr. Hall, if only one purchaser takes ratably, is that going to solve the problem of the drainage? A. Drainage will occur if there is a greater offtake from one well than the others.

Q. Right. Now, the producers can produce the wells at the rate that the market can take the gas, can they not?

BY CHAIRMAN FANCHER:

Now, Mr. Grower, as I understand it, we are not supposed to consider market demand in making any decisions that we make.

[289] BY MR. FRANKS:

That's correct.

BY MR. GROWER:

Well, do you want to get into that argument now?

BY CHAIRMAN FANCHER:

No, sir.

BY MR. FRANKS:

We object to any questions relating to market demand as it might be concerning takes in wells.

BY MR. GROWER:

Q. Well, if the market cannot take the gas, what is it going to do with it, Mr. Hall?

BY MR. WALLER:

That's not for the Board to decide, Mr. Chairman.

BY CHAIRMAN FANCHER:

I agree with that, Mr. Waller. You might go talk to the legislature about that, Mr. Grower.

BY MR. GROWER:

You keep wanting to prompt me into arguing that point, which I will be happy to do if you wish.

BY CHAIRMAN FANCHER:

We will do it later.

Q. (Mr. Grower) Mr. Hall, I hand you Mr. Wilbur Knight's Exhibit 3, which is the production history from these wells. Are you familiar with all those production statistics from these wells? [290] A. Yes, I'm familiar with the wells.

Q. Before the market was reduced and the purchaser, Transco in this case, determined it could not produce any more gas from nonsignatory parties, prior to that time were these wells ratably produced by the operators? A. They were ratably produced, I would say, yes.

Q. You say that's ratable production? A. Based on their well capacity to produce, yes.

Q. Was there any drainage caused by that ratable production? A. There was drainage being—in which wells now?

Q. The wells that produced the greatest amount of gas. A. Yes, there would be drainage there.

Q. Was the Rogers Well draining from other wells in that same reservoir? A. Apparently, at these high rates it would be draining, yes.

Q. And you say they were being produced—even though they were being produced ratably there was drainage? A. There was drainage, yes.

Q. Are you familiar with the allowables for the Getty-Rogers and the Getty-Buckley Wells? A. I have seen their deliverability, yes.

Q. Are you familiar with what the allowables have [291] been for those wells as set by order of the Board? A. As best I recall—now, this is my opinion, that the wells are capable of producing in excess of what they are producing—the rates shown here.

Q. Are you saying you don't know what the allowables were? A. I'm saying what the deliverabilities——

Q. I didn't understand you. Are you saying you know what the allowables were? A. I will look.

Q. All right. A. Are you ready for me to finish now?

BY MR. WATTERS:

Mr. Chairman, I would like to object to this line of questioning. He is asking questions about production from the past and whether or not past production has resulted in drainage. That's immaterial to this issue before the Board. The issue before the Board at this time is whether or not the failure to take ratably does not protect the coequal and correlative rights of all parties in the pool. That is the point to which is testimony is directed. What has happened in the past when there was no limitations on the ratable take is immaterial to this matter before the Board at this time.

BY CHAIRMAN FANCHER:

Well, as I recall it, the Petitioner introduced this [292] exhibit. He is cross examining him on it. He is asking him about allowables and whether he knows what they are or not. So far he has said he knows what the deliverability is, and I think we will allow him to continue.

BY MR. WATTERS:

The line of questioning is directed to past operations though.

BY CHAIRMAN FANCHER:

Well, this exhibit goes all the way back to April of 1981, Mr. Watters.

BY MR. WATTERS:

That's the Petitioner's exhibit?

BY CHAIRMAN FANCHER:

Yes, and that's what he is referring to.

BY MR. WATTERS:

I still would object to it being not material.

BY CHAIRMAN FANCHER:

Okay, your objection is noted.

A. (The Witness) I would not know what the allowables were back prior to—I have one of the date of September 1, 1982, showing the deliverability of—gas deliverability tests for these wells.

Q. (Mr. Grower) You are not familiar with the allowables? A. No, not back in these prior years.

[293] BY MR. GROWER:

I think that's all the questions we have.

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Excerpts from the testimony of Ray Corcoran

DIRECT EXAMINATION

BY MR. WATTERS:

Q. Would you state your name and place of residence? A. My name is Ray Corcoran, and my business address is P. O. Box 1404, Houston, Texas. I'm a natural gas activities manager for Getty Oil Company.

Q. Would you briefly describe your business background? A. I graduated from West Texas State University in 1969, with a Bachelor of Science Degree. Between 1965 and 1972, I was employed by Phillips Petroleum Company in Amarillo, Texas with various marketing positions. In 1972 I was transferred to Corpus Christi in the marketing department. In 1976 I transferred to the gas and gas liquids department for Phillips Petroleum Company in Houston, Texas. My primary responsibility included negotiating gas sales and purchase agreements for [294] the Southern Division office. In 1978 I was promoted to gas sales specialist. I resigned from Phillips Petroleum Company effective January 1, 1981. In January of 1981 I accepted the position of natural gas manager for Getty Oil Company.

Q. Are you familiar with the petition filed by Coastal Exploration to require Transcontinental Gas Pipe Line to take ratably? A. Yes, I am.

Q. Are you familiar with the gas sales contracts in Greens Creek Field and East Morgantown Field Area? A. Yes, of course, I am very familiar with the gas sales contracts which Getty Oil Company has with Transco dated August 6, 1981. I have examined the gas sales contracts between Harkins Company and Transco dated December 12, 1978. I have examined the gas sales contracts between Tomlinson Interests, Inc., Transco Exploration Company, ABI Properties, Marline 78 Company U.S.A., as seller and

Transco as purchaser dated July 6, 1979, covering certain lands in the East Morgantown Field. I have examined the gas sales contracts between Tomlinson Interests, Inc. and Transco dated September 5, 1978, covering lands in the Greens Creek Field. I have also examined the gas sales contract between Florida Exploration and Transco dated August 22, 1980. I am generally familiar with other contract in the area.

Q. Have you prepared any exhibits in connection with your testimony today? [295] A. Yes, I have prepared——

BY CHAIRMAN FANCHER:

Now, Mr. Watters, let me stop you just a minute. If you intend to get into all of these contracts, it's real nice to know he is familiar with them, but we don't want any testimony about what the contracts are.

BY MR. WATTERS:

What he has is four contracts, and I think it will show that Transco is obligated to purchaser near or full capacity from each well covered by those contracts.

BY CHAIRMAN FANCHER:

Well, now, that's not the question before this Board. That's a matter for the courts. If they are in violation of the contract, that's not our problem. The question is: are they taking ratably and without discrimination.

BY MR. WATTERS:

And that would depend upon what their contract obligations are.

BY CHAIRMAN FANCHER:

No, sir. No, sir, not at all. If they have contractual obligations, then you go down on Pascagoula Street, that is the place for you to go, or some place else.

BY MR. WATTERS:

Could we for the purpose of the record ask about seven or eight questions dealing with this?

[296] BY CHAIRMAN FANCHER:

You want to make proffer?

BY MR. WATTERS:

Yes, Sir.

BY CHAIRMAN FANCHER:

Very cautiously, yes, sir.

BY MR. WATTERS:

We will have to do it through introducing his exhibit that shows the gas contracts.

BY CHAIRMAN FANCHER:

Let any exhibits be offered for identification and make any proffer of testimony that you would like to.

BY MR. WATTERS:

Let's see, I have offered for evidence, and I guess you are admitting it and I'm making a proffer testimony, is that correct?

BY CHAIRMAN FANCHER:

That's correct. It may be marked for identification.

(THE EXHIBIT OF OVERLAYS OF GREENSCREEK FIELD AND EAST MORGANTOWN FIELD WAS MARKED AS EXHIBIT 1 TO THE TESTIMONY OF MR. CORCORAN AND APPEARS AS FOLLOWS, FOR PURPOSES OF THE RECORD ONLY)[1]

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[1] The contracts referred to by Mr. Corcoran were subsequently introduced into the Record but have not been made a part of the Joint Appendix.

R 19 W

T 5 N

T 4 N

"GREENS CREEK"

JEFFERSON DAVIS CO

MARION CO

"NEWSOM"

"E. MORGANTOWN"

"S. MORGANTOWN"

RIVER

Ext. 1 contra I.D.

GREENS CREEK FIELD
TOMLINSON INTERESTS, INC

NEWSOM FIELD
FLORIDA EXPLORATION COMPANY

EAST MORGANTOWN FIELD
TOMLINSON INTERESTS INC. et al

GREENS CREEK FIELD AREA
HARKINS AND COMPANY et al

Getty Oil Company
MAP OF
EAST & SOUTH MORGANTOWN,
GREENS CREEK & NEWSOM FIELDS
JEFFERSON DAVIS & MARION COS. MISSISSIPPI

JA-101

[297] BY MR. WATTERS:

Q. Would you please explain what is shown on this exhibit? A. This exhibit covers the Greens Creek Field and and East Morgantown Field. The first overlay in red indicates the area dedicated by Tomlinson Interests, Inc. to Transco under its agreement dated September 5, 1978. The overlay colored in blue is that area dedicated by Florida Exploration Company to Transco under its agreement dated August 22, 1980. The overlay colored in green is that area dedicated by Tomlinson Interests, Inc., Transco Exploration Company, ABI and Marlin 78 Company to Transco dated July 6, 1979. The overlay in yellow shows the area dedicated to Transco under its contract with Harkins, dated December 12, 1978. The area on the black sheet that is outlined in heavy black lines indicates the area dedicated by Getty to Transco by agreement dated August 6, 1980.

Q. What quantity of gas is Transco obligated to take or pay for under the terms of the Harkins agreement, which is indicated in yellow on the map? A. Transco is obligated to take any quantities of gas well gas tendered by Harkins, provided such quantities do not exceed 10 million cubic feet per day per completion.

Q. What quantity of gas is Transco obligated to take or pay for under the Tomlinson September 5, 1978 contract, which is shown in red on this map?

[298] BY MR. STEWART:

Mr. Chairman, we are going to object to this line of testimony. Mr. Corcoran isn't a party to those contracts. Those contracts are not in evidence, and they would be the primary evidence.

BY CHAIRMAN FANCHER:

Yes, sir, we have already held that the testimony is not admissible. He just wants to put it into the record.

BY MR. WATTERS:

Q. What quantity of gas is Transco obligated to take or pay for under the Tomlinson September 5, 1978 contract, which is shown in red on this map? A. Transco is obligated to take or pay for, if not taken, any quantity of gas well gas tendered by Tomlinson provided such quantity shall not exceed seller's interest in 10 million cubic feet per day per completion.

Q. What quantity of gas is Transco obligated to take or pay for under the terms of the Florida Exploration contract, which is colored in blue on this plat? A. Transco is obligated to take or pay for, if not taken, the amount of gas equal to 85 percent of Florida Exploration's working interest ownership percentage in any gas which Florida Exploration may have available for delivery as the results of an Operating Agreement.

Q. What amount of gas is Transco obligated to take or pay for under the Tomlinson et al contract dated July 6, 1979, [299] which is shown in green on this map? A. Transco is obligated to take or pay for 90 percent of deliverability from all sources of gas.

Q. In other words, under these gas sales agreements, Transco is obligated to take or pay for all or substantially all of the gas produced by wells operated by these parties, is that correct? A. Yes, it is.

Q. How does the take or pay provisions in these gas sales contracts compare with the take or pay provisions of the gas sales contract which Getty Oil Company has with Transco dated August 6, 1980? A. It's substantially different. In Getty's gas sales contract Transco is not obligated to purchase all of the gas available to Getty or the gas from the common pool. Transco is only obligated to take Getty's pro rata share of the production in each unit.

Q. The petition filed in this matter indicates that Transco has purchased from the date of first production in all well

listed in the petition all the production from said wells until on or before July 1, 1982, is that correct? A. Yes, it is. The three wells mentioned in the petition which are operated by Getty, are the Rogers 28-11, the Sipp 20-9, and the Buckley 33-6. In all of these wells Transco has purchased all of the gas produced, even though it was not [300] obligated to do so insofar as gas sales contracts are concerned. Transco now advises that it will only purchase the share of gas that it is obligated to purchase under its gas sales contracts.

Q. According to your records, what share of gas is that? A. Okay, in the Getty Oil Company-Rogers 28-11 Well, Transco has the commitment to purchase gas from the parties owning a 45 percent interest. Tennessee has a contract to purchase gas from parties owning a 2 percent interest; however, at this time Tennessee Pipe Line is not connected to the Getty wells. According to our information, the remaining ownership in the wells, namely 53 percent, is uncommitted. In the Sipp 20-9 Well Transco is obligated to take gas from the owners of 70 percent interest. Nine percent is committed to Tennessee, and the remaining 21 percent is undedicated gas. In the Getty-Buckley 33-6 Well, Transco is obligated to take from owners of 80 percent interest. Tennessee, when its pipeline is completed, is obligated to take gas from the owners of 11 percenter interest. The remaining nine percent is owned by parties without gas sales contracts.

Q. Has Transco contacted you, as operator of these wells, concerning the amount of gas which they will take in the future? A. Yes, they have. They have advised us that they will only take the minimum contract quantity of gas which it [301] has committed to them under contract.

Q. In other words, the Rogers 28-11 Well, it has indicated it will only take 37 percent of the amount that the well was capable of delivering, and from the Sipp 20-9, it will take only 59 percent of the gas that it's capable of

delivering, and for the Buckley 33-6 it will take only 70 percent of the gas which the well is capable of delivering?

BY MR. STEWART:

Object to the form of the question.

BY CHAIRMAN FANCHER:

I think that may be a little bit leading.

BY MR. WATTERS:

It was, I agree. I was trying to save time. I'll do it the other way.

Q. Are you familiar with the percentage of interest which Transco will take in the Rogers 28-11 Well, the Sipp 20-9 Well, and the Buckley 33-6 Well? A. Yes.

Q. What percentage of the total interest in those wells has Transco indicated they will take? A. By our figures that we have worked up with calculations, we come up with 37 percent of the amount of gas capable of delivering for the Sipp 20-9 Will, 59 percent, and for the Buckley 33-6, approximately 70 percent interest. Now, these figures were arrived at by taking the dedicated interest [302] under contract times the contract minimum.

Q. What is your understanding with reference to Tomlinson as operator of the Willoughby 3-5 Well in Section 3? Have you been advised whether or not Transco has told them they would only take committed gas in that unit? A. Yes, I have received a copy of the correspondence stating that.

Q. What is that share? A. By my calculations it would be approximately 43 percent.

Q. Is the gas purchased from the Tomlinson Willoughby 3-5 Well subject to the Getty contract or the other Tomlinson contract? A. The Tomlinson Willoughby Well is

subject to the Getty contract because the acreage was farmed out from Getty.

Q. According to your information, has a similar notice been sent for Harkins, Florida Exploration and Tomlinson with reference to wells that they operate under the four gas sales contracts which are reflected on your exhibit? A. According to my information there has not. Under these gas sales contracts, Transco is obligated to take virtually all of the gas produced under the wells, and accordingly, they are not refusing to take any gas from them. However, I understand Transco has mailed a letter asking for "voluntarily" cut.

Q. Referring to your map, which wells will continue [303] to be produced at or near delivery capacity? A. As far as the Harkins is concerned, its Board of Supervisors 16-11 Well in Greens Creek and its colored in yellow on the plat, would still be producing at its delivery capacity. The Tomlinson Williamson Well in Section 21, which also produces from the Harper Sand Gas Pool, is covered by one of these contracts, and also would produce at delivery capacity. The Florida Exploration Carlisle 4-2 Well in Section 4, Township 4 North, Range 19 West, and the Florida Exploration Barnes 29-1 Well in Section 29, Township 5 North, Range 19 West, will continue to produce at delivered capacity. The Tomlinson well in East Morgantown covered by the green area, such as, the Tomlinson Beacham in Section 11, the Tomlinson Board of Education in Section 16, the Tomlinson Petard in Section 15, the Tomlinson Thornhill in Section 22, will all still produce at delivered capacity.

Q. Have you heard the previous testimony concerning the continuity of Harper Sand Gas Pool between these fields and the fact that one well will cause drainage from the Harper Sand Gas Pool? A. Yes, I have.

Q. In your opinion what would be the affect of disproportionate withdrawals from these wells, which you referred to by Transco? A. The wells which are producing at full deliverability, will be draining those wells producing at less than [304] full deliverability. This will be detrimental to owners of interest in units operated by Getty and the Tomlinson Willoughby Well which is covered by the Getty contract.

Q. In your opinion will this protect the coequal and correlative rights of all owners in the pool? A. No, it will not, because the owners in the underproduced units will not recover their fair and equitable share of hydrocarbons in the pool.

Q. Will this unratable withdrawal also constitute waste as defined in the Mississippi Conservation Statute? A. In my opinion it will.

Q. Does Getty have gas balancing agreements in its Operating Agreements in these fields? A. No, we do not.

Q. Does Getty purchase Coastal's gas, or does it deliver it to Transco? A. We strictly deliver the gas under the terms of the Operating Agreement.

BY MR. WATTERS:

That's all the questions we have.

CROSS EXAMINATION

BY MR. STEWART:

Q. In your Exhibit 1, I believe it is, you have shown various contract areas with regard to contracts that you have reviewed between other parties as well as Getty Oil Company with Transcontinental, is that correct? [305] A. Yes.

Q. Exactly what do these contracts dedicate to Trans-

continental as far as a commitment to continue to produce and deliver gas to Transcontinental Gas Pipe Line?

BY CHAIRMAN FANCHER:

Mr. Stewart, you objected to the introduction of this testimony, we sustained the objection and he made proffer. Are you cross examining him on proffer?

BY MR. STEWART:

Yes, sir, I certainly reserve my objection, but if it has been offered under proffer, I certainly think we are entitled to cross examine.

BY CHAIRMAN FANCHER:

All right, sir.

Q. (Mr. Stewart) In all of these contracts exactly what is dedicated to Transcontinental Gas Pipe Line Company as far as a commitment to continue to deliver gas to Transcontinental? A. As we have previously stated, it varies in each contract.

Q. When Getty, or when any other party enters into a gas contract with Transcontinental Gas Pipe Line, are they committing for a certain period of time to delivery anyone else's gas from those wells? A. In some contracts, yes. There is a special reference in one of the agreements.

[306] Q. This is your interpretation? A. This is my interpretation, right.

Q. Did Getty commit to or dedicate to Transcontinental anyone else's share of gas over the term of that contract? A. We dedicated our pro rata working interest in each unit with some additions during certain periods of the year.

Q. Why didn't Getty dedicate every one else's gas under that contract? A. I did not negotiate the contract at that time.

Q. What is the term of Getty's contract with Transcontinental Gas Pipe Line Company? A. Fifteen years from date of first delivery.

Q. That's a fairly ordinary term for gas purchase contracts, is it not? A. It's not—there is no standard form. There are some regulations that require this, but it cannot be considered as standard.

Q. There is no standard term. Terms are, generally in this area, all in excess of 10 years, are they not? A. I think so, yes.

Q. You have indicated that in your opinion wells which are required to under produce from their maximum efficient rate of production, or from what they can produce, are going to be drained by those wells which are producing at their maximum efficient rate of flow, is that correct? A. Yes.

[307] Q. The Getty Rogers and the Getty Buckley Wells all have deliverability in excess of every other well around them, do they not? A. We have recently completed the deliverability test and I'm not familiar with the other deliverability tests.

Q. You do not know what the Sipp deliverability test is? A. The Getty operated wells I'm well familiar with the deliverability tests, but the other operated wells, I do not know.

Q. Assume that the Getty operated wells have a deliverability potential in excess of every other well produced in and around those wells in the Greens Creek and East Morgantown Area, then is it not true that even though the Getty wells may be under produced if they are not under produced to the extent that that production rate is lower than the other producing wells, then there is no drainage, is there?

BY MR. FRANKS:

We object to the question calling for a legal conclusion on the part of the witness, Mr. Chairman. The issue is whether those wells are being allowed to produce at the maximum efficient rate. Nobody ever said that all wells will produce from the pool at the same rate and that all wells have the same identical amount of hydrocarbons underlying the unit assigned to them. The issue is that if they are producing at the maximum efficient rate, which in this instance would be their [308] deliverability test, then they are being produced ratably. And the issue we have here today is whether because of the failure of Transco to purchase ratably as to whether these wells can be produced ratably or not.

BY MR. STEWART:

Mr. Chairman, I think that a substantial issue before this Board is what is ratable production? Mr. Franks has certainly got an opinion of it and I think that my opinion differs from it. Mr. Corcoran has indicated that there is drainage and I'm simply trying to cross examine Mr. Corcoran as to the basis of his statement and I think that I am entitled to do that.

BY CHAIRMAN FANCHER:

Well, I'm not sure, Mr. Franks, that the question calls for a legal conclusion. I think it calls for a conclusion of an expert in petroleum engineering, and I don't recall Mr. Corcoran having been qualified as anything except a gas purchaser agent for Getty. So, I sustain the objection on that basis.

Q. (Mr. Stewart) Mr. Corcoran, if the Getty wells have a deliverability in excess of their allowables as created by the State Oil and Gas Board, does Getty still produce at its deliverability? A. I didn't understand part of your question.

Q. If the Getty wells have a deliverability that are in excess of the allowables as granted by the Oil and Gas [309] Board, does Getty still deliver at its deliverability? A. I suppose I will show my expertise here, but I was under the understanding that the allowable was set by the deliverability.

Q. Assume that an allowable has been set and a subsequent deliverability test shows that your deliverability is greater than the allowable, which does Getty produce at?

BY MR. WALLER:

Mr. Chairman, that doesn't have anything to do with this hearing.

BY CHAIRMAN FANCHER:

I can't see that it does either, Mr. Stewart.

BY MR. FRANKS:

We object to the assumption of such an issue.

BY CHAIRMAN FANCHER:

We fix allowables every six months based on deliverability and let's not be assuming that they are more or they are less than the deliverability tests.

BY MR. STEWART:

Q. You have given the Board some figures based on your investigation as to what interest is committed under the gas contract for the Getty wells and what remains uncommitted. In your investigation did you include the interest of non-signatory parties who have within the last month agreed to commit their gas and sell their gas to Transco under the outstanding offer? [310] A. Yes, that was included in the calculations.

Q. You have also investigated contracts covering the entire Greens Creek and East Morgantown Fields, is that

correct? A. Not the entire fields, just these particular ones that I have mentioned. I know there are many, many.

Q. Are the prices that are being paid under these various contracts the same? A. The prices vary in different areas.

Q. They vary by contract, do they not? A. Yes.

Q. Does Getty—do the signatory parties to Transco contracts in Getty operated wells receive the same prices? A. Through July they have received the same prices.

Q. All signatory parties in the Getty operated wells? A. No.

Q. That's my question: do signatory parties—do parties who own interests in Getty operated wells and who have contracts with Transco, do they receive the same prices for their gas? A. The signature parties receive different prices, but all of the nonsignatory parties through July have received the same price.

Q. These are parties that have no contract to sell their gas? A. Yes.

[311] Q. The interest of these parties is uncommitted to any pipeline, is that correct? A. That's correct.

Q. And at any time they could sell their gas to a pipeline giving them the best offer, is that correct? A. Yes, that's my understanding.

Q. On the other hand signatory parties have committed their gas for an extended period of time to that one particular pipeline, have they not? A. Yes.

Q. And that is part of the negotiation process in entering into an agreement, is it not? A. Yes.

Q. How does Getty deliver gas to Transcontinental Gas Pipe Line from the wells that are the subject of this petition? A. I am not in the production department, I do not work in the field, I have never been in the field, but it's my

understanding we deliver through a central facility located in Section 33.

Q. You deliver an amount of gas from all of your wells to Transcontinental Gas Pipe Line, is that correct? A. Yes.

Q. Who allocates the total production stream that is sold to Transco back to the various wells? [312] A. I can't answer that question, I assume it to be——

BY MR. WATTERS:

I object to this line of questioning. I can't see that it has any relevancy to ratable take.

BY CHAIRMAN FANCHER:

I sustain the objection. I don't think it does either.

BY MR. STEWART:

Mr. Chairman, I'm still under a proffer, I assume.

BY MR. FRANKS:

Even under proffer you are subject to the rules of evidence. Same objection.

BY CHAIRMAN FANCHER:

I just can't see who allocates production back to these various wells has anything to do with it, Mr. Stewart. I mean, whether it's Jim Jones and John Smith, you know.

BY MR. STEWART:

That's my point.

Q. Who allocates production among the various wells in each well to the various interest owners in those wells?

BY MR. FRANKS:

We have the same objection.

BY CHAIRMAN FANCHER:

I think he has already stated he didn't know, Mr. Stewart.

Q. (Mr. Stewart) Does Transcontinental Gas Pipe Line Company allocate production among the various intesest owners in the Getty operated wells? [313] A. No.

BY MR. STEWART:

That's all I have.

EXAMINATION

BY MR. TAYLOR:

Q. You have heard testimony that Transco has offered Coastal $5.00 for its share of gas produced in the Sipp and Rogers wells. Do you recall hearing that testimony? A. Yes.

Q. Will you tell the Board what price Getty is receiving for its share of gas produced from the Rogers and the Sipp wells? A. Getty is receiving $7.907 per MMBTU, plus full tax reimbursement.

Q. How long will that price be in effect? A. I believe until January 1, 1983, or the date that we request a price redetermination.

BY MR. STEWART:

Mr. Chairman, we are going to object to this line of testimony. It's been sustained all morning and afternoon.

BY CHAIRMAN FANCHER:

Yes, sir, I wondered when you were going to object. I sustain the objection.

BY MR. TAYLOR:

Mr. Chairman, we offer this testimony for the purpose of showing that the prices offered to Coastal are discrimi-

natory [314] in favor of the operator and other owners of the pool, which gets right to Rule 48.

BY MR. STEWART:

That's the only issue, Mr. Chairman, the price.

BY MR. TAYLOR:

I couldn't agree more and that's what I'm asking the witness about.

BY CHAIRMAN FANCHER:

I think it has been well established, what the price—$7.93 to Getty and Coastal has been offered $5.00 I don't think we need to hear that again.

BY MR. TAYLOR:

Yes, sir.

Q. (Mr. Taylor) Mr. Corcoran, you are familiar, you testified that you are familiar with the maximum efficient rate of flow from the Getty Sipp and the Getty Rogers Wells, is that your testimony? A. Yes.

Q. Will Transco's proposal not to take the gas of non-signatory parties, like Coastal in those wells, result in the wells not producing at their maximum efficient rate of flow? A. Yes.

Q. In your opinion will waste result because of that? A. Yes.

BY MR. TAYLOR:

Mr. Chairman, that's all the questions we have.

[315] BY MR. WALLER:

I have one question.

BY CHAIRMAN FANCHER:

All right, Mr. Waller.

EXAMINATION

BY MR. WALLER:

Q. In the Rogers Well, or any of the wells surrounding that area, who has a gas transportation pipeline hooked up so that the working interest owners might sell their ratable share of the gas being produced? A. At the present time I do not know of another purchaser that is connected to our wells.

Q. So, if Transco doesn't take the gas, is it possible for any price to sell the gas as the system is now established? A. Unless it was transported by Transco.

BY MR. WALLER:

That's all I have.

BY CHAIRMAN FANCHER:

Any other questions?

FURTHER CROSS EXAMINATION

BY MR. STEWART:

Q. Mr. Corcoran, Transco in its letter to the nonsignatory parties has offered to transport it to another pipeline, has it not? A. Yes.

Excerpts from the testimony of Trisha Pollard

DIRECT EXAMINATION

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[321] Q. (Mr. Stewart) With respect to the Harper Sand Gas Pool, how many different contracts does Transco have in these two fields? A. Approximately 35.

Q. Do you have an exhibit indicating the number of contracts and the contractual parties of these contracts that affect the Harper Sand Gas Pool in these two fields?

BY MR. FRANKS:

Mr. Chairman, Getty has just offered an exhibit and [322] testimony regarding contracts by parties with Transco in this field and in the Harper Sand Gas Pool, and the Board would not allow the introduction of that testimony except by proffer. I think that is, again, Transco trying to do the same thing that the Board denied Getty the right to do, and I think an objection to this type testimony should be sustained. How many gas contracts they have got, or where they are, and who they are with, is not the relevant issue here and the Board has just ruled that Getty couldn't introduce similar type testimony except under proffer.

BY CHAIRMAN FANCHER:

I agree with you, Mr. Franks.

BY MR. STEWART:

Mr. Chairman, they have constantly stated that the issue before this Board is whether or not Transco has purchased ratably and without discrimination. How do you purchase without a contract? I simply say that what we are trying to demonstrate is the present status of the purchasing situation in these two fields and to the extent that is affected by the current market situation. And it certainly is relevant in the Board's making any determination on pur-

chasing ratably without discrimination. If the Board sustains it, we will proffer it into the record, but in our opinion it should not be sustained.

• • • • • • • • • •

[323] BY MR. STEWART:

Mr. Chairman, my objection was not based on irrelevancy. It was based on the fact that a person who was not a party to that contract was interpreting the contract for provisions that were not before this Board, which the contracts themselves are the primary evidence.

BY MR. FRANKS:

Mr. Chairman, this is a rather simple hearing that Mr. Stewart is trying to make complicated. We have got a petitioner here, Coastal. Transco has said, "We art not going to take your gas," first, and later they come up and say, "We will take it, but we are not going to pay you what we are paying your operator for." That's the issue, is whether they are going to take Coastal gas ratably without discrimination or not. That's the issue, and to bring in another thousand contracts or 50 contracts, or whatever, is irrelevant to what this petitioner and the relief they are seeking here, is that their gas be purchased ratably without discrimination.

BY MR. STEWART:

Mr. Chairman, why is it irrelevant that under the very same wells that Getty has a contract with, there are 12 other contracts and there are 35 other contracts covering the same pool that all have different terms and conditions, and payments, quantities, quality, everything is between the producer and the [324] pipeline has been up until this day a matter of contract, regardless of where that gas has been produced or by whom it has been produced. Now they want to limit this Board's investigation to just one contract, when Transco doesn't look at the Getty contract

as the contract in this field; it's one of 35. Our position simply is: why can the petitioners here ask this Board to force terms and conditions in one contract when there are 35 others with different terms and conditions? If the Board has got to determine what terms and conditions it's going to require, how can it make any kind of decision and determination at all if it doesn't know what terms and conditions of the contract exists.

BY CHAIRMAN FANCHER:

That's the whole point, Mr. Stewart, as far as I'm concerned. We don't intend to dictate terms and conditions of contracts.

BY MR. FRANKS:

And we don't want you to.

BY MR. STEWART:

Mr. Chairman, we move that the petition be dismissed because it is undisputed that the petitioner has currently got a market for its gas. He can sell his gas under the terms and conditions that have been offered to him, and if he can get better terms and conditions, Transcontinental will transport that gas to that other purchaser.

[325] BY CHAIRMAN FANCHER:

All right, you moved to dismiss. I will overrule that objection—your motion. Mr. Stewart, you don't plan to go into the terms of all of these 35 contracts, do you?

BY MR. STEWART:

No, sir, they will be made a part of the record though.

BY MR. FRANKS:

To which we will object.

BY CHAIRMAN FANCHER:

Yes, sir, I knew you would. Go ahead, Mr. Stewart, for the purposes of the record, you may proceed.

BY MR. FRANKS:

Mr. Chairman, may we have a continuing objection to any testimony regarding any other contracts that they have with other parties that are not a party to this hearing?

BY CHAIRMAN FANCHER:

Yes, sir.

BY MR. STEWART:

Q. Ms. Pollard, have you prepared an exhibit identifying particular contracts that Transco has with various interest owners in the Greens Creek and East Morgantown Fields? A. Yes, I have.

BY MR. STEWART:

I would introduce this as Exhibit 1 to Ms. Pollard's testimony.

BY MR. FRANKS: Mr. Chairman, we would object to any contract [326] involved in any wells other than the six that are at issue here, because the production from those six wells, or nonproduction from those six wells, are the only ones that are being charged as not being purchased ratably without discrimination and we don't think we need to go into any other areas other than those six wells.

BY CHAIRMAN FANCHER:

I sustain that objection, Mr. Stewart:

BY MR. STEWART:

There is apparently a dispute in the geological testimony as to where the Harper Sand Gas Pools lie. It's already been testified to that all of these contracts cover production from the Harper Sand Gas Pool. We submit that it is just

as relevant as the six wells that the petition has apparently arbitrarily named in their petition.

BY CHAIRMAN FANCHER:

Mr. Stewart, I still think—of course, I don't know what we are supposed to do with Rule 48. Here we are arguing about whether or not somebody is supposed to comply with Rule 48. It seems to me that whether we have a hearing about it or not, they are supposed to comply with it. And whether they are or not, would seem to me to be a matter with which this Board is really not equipped to handle. All we can do is determine whether you are or whether you are not. And I don't know what we can do about it if you are not. But anyway, let's limit the [327] testimony to these six wells that are the subject of this petition.

BY MR. STEWART:

Q. Ms. Pollard, I ask you to look at Exhibit 1, and can you identify which contract in this list of 35 contract that cover the Harper Sand Gas Pool in East Morgantown and Greens Creek Field are contracts under which Transcontinental, Inc. is purchasing production from the six wells named in Coastal's petition? A. Transco is purchasing gas from the six wells in the petition under contract marked by asterisks on Exhibit 1.

Q. How many contracts are shown on that exhibit that production is produced under and purchased from these six wells? A. There are 12 contracts.

BY MR. STEWART:

I introduce this as Exhibit 1 to her testimony. In conjunction with that, Mr. Chairman, I would submit the 12 gas purchase contracts that are asterisked also as Exhibit 1.

BY CHAIRMAN FANCHER:

All right, as we have done before, let them be marked for the purpose of the record only.

(THE LIST OF CONTRACTS AND ASTERISKED CONTRACTS WERE MARKED AS EXHIBIT 1 TO THE TESTIMONY OF MS. POLLARD, AND APPEAR AS FOLLOWS:)

[330] Q. Do the contracts that Transco entered into with various producers cover fields as defined by the State Oil and Gas Board? A. Usually not, because when a producer approaches us to market his gas to us under a gas purchase agreement, he typically has discovered one well and assigns a name to a field area, which may or may not be later adopted by the Board. The name that the Board adopts from the field may include a larger area than what is committed, a smaller area, or that name may not appear on the Board's designation of fields at all.

Q. Do the areas dedicated under these various contracts—these 12 contracts that you have identified in your Exhibit 1—generally correspond to East Morgantown and Greens Creek Fields? A. Generally, although some of the contracts cover what is called Newsom Field. • • •

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[335] BY MR. STEWART:

Q. What exactly does Transco purchase when it makes a contract with a producer? A. We purchase the seller's working interest in leases under which he has mineral interests, as well as any fee interest that he has in any acreage.

Q. Does Transco approach the operator, and is Transco able to contract with the operator to dedicate interests that the operator does not own in any wells? A. No, a person can only sell what he owns. The fact that the producer may be an operator, generally, has no bearing on our contracting practices. When we begin to buy his gas in Mississippi and it was apparent that there were so many working

interest owners in each of the wells, we approached several ways of getting the working interest of every owner under commitment to us, because that was how we preferably would like to be able to do it. We had several attempts by our own legal department, I believe, also with outside counsel. And, in fact, even undertook a campaign of asking people, just independents and other people who produce gas in Mississippi, if there was any way that they knew of that we could get these interests under contract.

BY MR. FRANKS:

We object to hearsay, Mr. Chairman—talking about what other people said and who they conferred with—that's all hearsay. What does she know about it?

[336] BY CHAIRMAN FANCHER:

I sustain the objection, Mr. Franks. I don't think the Board is interested in the manner in which Transco or anybody else did about negotiating contracts.

BY MR. STEWART:

Q. What factors are important to the pipeline company in negotiating a contract? A. There are several factors—

BY MR. FRANKS:

We object to the question as not being relevant to this hearing as to whether they are going to take Coastal's gas and purchase it ratably without discrimination.

BY MR. TAYLOR:

Mr. Chairman, may the record reflect that the petitioner, Coastal, has a continuing objection to this line of inquiry?

BY CHAIRMAN FANCHER:

Yes, sir. I don't think it's material, Mr. Stewart.

BY MR. STEWART:

Q. Ms. Pollard, referring back to Exhibit 1, are the terms and conditions in these contracts the same? A. No.

Q. Are these contracts negotiated with—are they all negotiated with operators of various wells in these fields? A. Not with operators, no. The exhibit shows—the first column shows the contract number placed on it by our internal numbering system. The second column shows the date [337] tht the contract was entered into, and the third column marked "Seller" shows the name of the entity willing to commit its gas under a contract to us.

Q. What factors are used by Transco to determine the terms and conditions in which it is willing to enter into a contract for the sale of gas? A. The amount of reserves that the producer has proven up, the amount of the deliverability, the takes that would be negotiated into the contract. Obviously, the price at which we would take the gas, and the condition of our market has played an extremely important role in the past several years in determining whether we enter into contracts and under what terms.

BY MR. FRANKS:

Mr. Chairman, we object to this line of testimony. This Board cannot require Transco or any other pipeline to purchase gas from the Harper Sand Gas Pool. But they came in and said, "We want to buy gas from this pool." Once they commit and say, "We are buying gas from this pool," from that point on, Rule 48 says that they may not favor one person over another in the common source of supply. The testimony has shown that they are favoring one other another; that is Getty as operator signatory party, over Coastal as a nonsignatory party, who wants them to take their gas ratably at the same price. And to not do so favors Getty over Coastal. That's the only issue. We didn't say no one required them to buy gas in this

field, but once [338] they started buying it in this pool, those are the criteria, Mr. Chairman. It's the Board's criteria under Rule 48, not Transco's criteria.

BY MR. GROWER:

If the Board please, we think that is Mr. Franks' criteria, because we think that we need to show that there are many things that go into the obligation of the pipeline company to purchase gas. The market conditions are one of the major ones. The market conditions affect what they can pay for gas today, not what was contracted two or three years ago. They are talking about contracting to sell us gas today, not two or three years ago. And there is a big difference. What they want to do is pick out the contract with the biggest price entered into two or three years ago and say, "You have got to buy our gas for that today." So, we say that's ridiculous. They didn't offer to sell us that gas two years ago. They have been selling it to us under that price, but they didn't have to sell us that gas. If somebody came along and offered them twice as much they would have jerked it away from us in a second. Now that the price has gone down, they want to make us pay it under the highest contract when that's not the price today. That's not the market today. We say the present market conditions are something this Board has got to take into consideration—not what they were two or three years. You pick out one contract and say, "That's the only thing you can testify about. [339] You can't testify about any of these other contracts, because that one has got the best price and that's the one we want, and the best conditions." So, you make us take what contract they want. That's all there is to this case and that's not right.

BY MR. FRANKS:

That's not it at all, Mr. Chairman, members of the Board. Transco has been here for several years. They had

their gas contracts. They entered into a course of conduct relative to all of these six wells as to how they were going to purchase gas and whose gas they were going to purchase and what price they were going to pay for it. That course of conduct led Coastal to sell under its operator's contract at that same price. Transco knew this. This is no mystery to Transco about whose gas they were buying. They knew that they had been taking Coastal's gas and they knew that they had been paying Getty for that gas to be transmitted to Coastal. As Getty testified, "We only delivered gas." Transco bought Coastal's gas and they acted only as agents to collect the money to pay it to Coastal. They know what has been going on all the time. They say it's our prerogative to determine. Here's what they really get down to: it's our prerogative to determine at any time whether we will or will not take and purchase ratably without discrimination. And it's not Transco's prerogative; it's this Board's prerogative.

BY CHAIRMAN FANCHER:

You know, that objection led to a lot of discussion way [340] outside the scope of the question. I think the question was: what considerations are involved in executing a contract by Transco. That may constitute y'all's final argument in this case, I'm not sure about that. But anyway, I sustain the objection, because I don't think that Transco's considerations in adopting contracts are at issue here.

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BY CHAIRMAN FANCHER:

Before we proceed let me ask one question. Are there any other gas purchasers besides Transco from the six wells in question here?

BY MR. STEWART:

Yes, sir.

[341] BY MR. TAYLOR: Not that are taking the gas.

BY MR. STEWART:

They have bought the gas; they have a contract to buy it. Whether or not they are taking it is another question. We understood that they were hooked up.

BY MR. FRANKS:

Well, that's hearsay.

BY MR. WALLER:

I believe the record is, Mr. Chairman, that Tennessee went in and signed some contracts with some of the minor working interest owners in some of these wells. But they have not completed a gathering system and nobody has sold any gas since the inception of production in these six wells to any purchaser but Transco as of this date.

BY CHAIRMAN FANCHER:

All right, go ahead, Mr. Stewart.

BY MR. TERRELL:

There is gas contracted in these wells to take, or at least under the Tomlinson-Willoughby Well.

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[344] Q. Would you explain to the Board very briefly why the prices are all different under contracts for production from the same wells? A. Prices are solely a matter of negotiation. These prices being paid for the deep gas are generally redetermined prices under contracts that allow the seller to select different options to determine his price. And to the extent that a seller selects a different option from another, or selects at a different time than another, or the contract contains some other clause that would allow the price to be even different than what the redetermination had said, or the contract contains a market out provision that would affect the price being paid.

[345] Q. Are these redetermination clauses the same in every contract? A. No.

Q. Which of these contracts has a market out clause? A. The last two contracts shown on Exhibit 3, both of them with Sabine Production Company. The one on December 1, 1981, covers Sabine's interest in the Greens Creek Field, and the one dated January 1, 1982, covers Sabine's interest in the Newsom Field.

Q. Would you explain to the Board what a market out clause is? That term has been bandied about, but let's try to make sure the Board understands what it is. A. Yes, it's a provision sometimes called an economic out which allows a pipeline purchaser to reduce the price that he is paying to the producer/seller under a gas purchase contract. If in buyer's sole discretion the gas being purchased is at prices which buyer's customers are not willing to pay because they can get alternative fuels at cheaper prices, the buyer generally notifies the seller of the price that he can pay and still be able to sell the gas on the other end of his customer, and seller can then either accept the price or he has the right to cancel the contract insofar as he sells his gas then for a price in excess of the price that the buyer offered him.

Q. Why don't all of the contracts in these fields have a market out clause in them? [346] A. Basically, because of the time that the contracts were entered into. Market out provisions are a fairly new phenomenon in interstate gas purchase contracts due to the passage of the Natural Gas Policy Act of 1978. Prior to that time the only gas which interstate gas pipelines could purchase was price regulated gas and which had been kept at artificially low prices; and therefore, we had no problem in being able to sell as much as we possibly could to our customers. The case is not true in intrastate market. I don't know in the case about Mississippi, but for instance, in Texas you had a very strong intrastate market which could purchase gas at prices that were not controlled—that were not regu-

lated. The market out or economic out provisions had been contained in intrastate contracts for a number of years.

Q. Did Transco institute a policy of requiring market out clauses on any gas purchase contracts that it entered into? A. At the time we began seeing that we may have a problem in marketing the gas that we were purchasing from producers under price deregulated contracts, we instituted a policy that any new contracts that we executed, the negotiations for that contract were entered into after February 1981, had to contain a market out.

Q. Now, you indicated that all of these contracts have what is called a redetermination clause, is that true also of the two contracts with Sabine Production Company? [347] A. Yes; just because the contract contains a market out provision doesn't mean that it does not also contain a redetermination provision.

Q. Does a redetermination allow the pipeline company to initiate negotiations to lower the price of gas? A. No.

Q. As a practical matter when a redetermination is exercised by a seller under the redetermination clause, does the redetermination result in lower prices? A. It can, and sometimes to the embarrassment of the producer, but the producer is required under the terms of his contract, if he wants to exercise his option to redetermine, he can. It's not mandatory in most of the older contracts, but if he does, once he does, he must stick with the option he has selected. If he has selected an option and all the facts are not in on what will make up that price and later the price is determined to be lower than what he had earlier been receiving, then, yes, his price will go down. And it has in some instances in these contracts.

Q. As a general rule though, will redetermined price go up or go down? A. Well, as a general rule it goes up.

Q. Do either one of the contracts with Sabine Production Company under which Transco is currently paying

$5.00, cover any production from the Rogers, Sipp or Willoughby wells? [348] A. Yes. The next to the last contract covers Greens Creek, which would, I believe, cover Sabine's interest in the Sipp 20-9. No, I'm sorry, it does not. The Greens Creek contract executed in December of 1981 by Sabine, covered Sabine's interest in the Rogers 28-11 Well, as well as some Greens Creek proper wells, such as, Williamson, Nelson, Stringer and Hathorne. And the Sabine contract executed in January of 1982 covers Sabine's interest in the Buckley, Dawson and Carlisle 1 and 2 Wells.

Q. So, Sabine Production, under its contract with Transcontinental Gas Pipe Line Company is receiving $5.00 per MMBTU for all of the wells under those contracts, is that correct? A. Yes, and that is inclusive of taxes.

Q. Does Transco have a gas purchase contract with either Coastal Exploration or the Fairchilds? A. No, we do not covering these wells. • • •

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[349] Q. Has Transco ever received an offer from these people to place their minerals under contract? A. Yes, we entered into extensive negotiations with Inexco approximately a year to a year and one-half ago, and negotiations went over a period of time and ended with a refusal by Inexco to sell their gas to us.

[350] Q. With regard to the wells that are operated by Getty Oil Company in this field, how does Transco take gas from these wells? A. In the Getty gas purchase agreement the point of delivery which specifies where title passes from seller to buyer, provided that a point of delivery would be, one, at a central point in the field at a tailgate of a central facility; two wellhead connections when requested by seller; or three, any conbination thereof. We take delivery from all gas in all Getty wells at the tailgate of a central

facility that Getty has constructed that is located by the Buckley Well shown by a triangle on Exhibit 2.

Q. How is the gas allocated back to each well in the Getty gathering system and then back to each owner under each well? A. Getty allocates all production from all of their wells, and we receive monthly allocation statements from Getty.

Q. Do these allocation statements indicate who is receiving proceeds for the gas? A. I don't believe they do.

Q. Does Transco have any information—is any information provided to Transco by Getty Oil Company with regard to whether or not nonsignatory parties are selling their gas or whether or not gas is being banked? A. No. I don't believe so.

[355] BY MR. STEWART:

Q. Ms. Pollard, are you aware of owners in these six wells and the surrounding wells in the East Morgantown and Greens Creek Field that have sold or have dedicated their gas to another pipeline company? A. Yes, we are.

Q. What is the name of that pipeline company?

BY MR. FRANKS:

We object to the question as being irrelevant and immaterial to the issue involved in this case. This case is to determine whether Transco is purchasing ratably without discrimination or not and it doesn't have anything to do with what any other pipeline company is or is not doing.

BY CHAIRMAN FANCHER:

I sustain the objection. I think that's right, Mr. Stewart.

BY MR. STEWART:

Mr. Chairman, how can Transco purchase all of the gas ratably without discrimination from a pool if it's being sold or it's dedicated to another pipeline company?

BY MR. FRANKS:

It doesn't say it has to. It says it has to offer to, Mr. Chairman.

BY CHAIRMAN FANCHER:

I sustain the objection. I don't think we are interested in what other pipelines are doing.

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[367] [EXAMINATION BY MR. TAYLOR]

Q. But in fact, during that period of time Transco knew that it was buying the gas of nonsignatory parties, didn't it? You may not have known the identity of the people, but you knew that you were buying gas from nonsignatory parties. A. We knew we were buying gas in excess of Getty and Tomlinson's working interests percentages.

Q. And therefore, you knew it was gas attributable to nonsignatory parties. A. That is correct.

Q. That was the reason in your letter of May 15, 1982, to Getty you said, "We are no longer going to buy the gas of nonsignatoy parties."? A. Yes.

Q. And you helped prepare that letter, didn't you? A. Yes, May 19.

Q. I believe that Mr. Stewart asked you some questions about the exhibit on which you represent the September 1982 prices being paid. A. Yes.

Q. And you have listed the two contracts executed by Sabine at $5.00, is that right? A. That's correct.

Q. The fact is that Sabine owns no interest in the Getty-Sipp Well that Coastal owns an interest in, do they? A. I don't believe that Sabine owns an interest in the Sipp Well.

[368] Q. And their interest in the Rogers is less than one percent, isn't it? A. I don't know. I don't see what difference it makes.

Q. Well, the list of contracts you have listed here do not list the April 1982 ratification between Tomlinson and Transco under which Tomlinson is getting $7.90 for their gas produced in the Willoughby; you don't list that contract, do you? A. That's true, we don't.

Q. Referring to your exhibit in which you list the September 1982 prices, with the exception of the two Sabine contracts at $5.00, the price you are paying Getty is in effect the lowest price you are paying under the contract to these different people who own an interest in the six wells, isn't it? A. No, that's not correct. The first one lists Tomlinson Interests, which is receiving $6.51.

Q. Not in the Willoughby Well though. A. I thought you said the six wells.

Q. That's right, the Willoughby Well is one of the six wells producing from the common pool. Tomlinson is not receiving $6.50 for its share of gas produced from the Willoughby Well that Coastal owns an interest in, is it? A. No, that's true.

Q. They are receiving $7.90, or thereabouts? A. Right.

[369] Q. Now, Mr. Stewart asked you, and you testified that Transco, to paraphrase your words, only purchases the seller's working interest under the Transco contract, do you recall testimony to that effect? A. Yes.

Q. But that, in fact, is not true in certain of the wells completed into the Harper Sand Gas Pool in Greens Creek, is it? A. That is true, that is not correct. As a general rule that is the case. Where that general rule is modified by contract, then that's not the case.

Q. And factually, Transco is taking, for all practical purposes, the deliverability capacity of the Harkins wells

in Greens Creek completed into what the Getty geologist testified as a pool common with the Harper Sand Gas Pool; Transco is taking deliverability capacity from those wells? A. Deliverability capacity, is that what you said?

Q. Yes. Let me rephrase it, if you are having trouble with that. In the Harkins wells completed into this same pool, according to the Getty geologist, is Transco refusing to take the gas of any nonsignatory parties to the contract between Harkins and Transco? A. No, I don't believe we are.

Q. So, that as to the Harkins wells Transco is not proposing to cut those wells back to only the interest of the [370] signatory parties? A. That's correct.

Q. Meaning that if Transco cut back the Getty wells to only the interest of the signatory parties, but continues to take all of the gas produced from the Harkins wells, regardless of whether it's the gas of the signatory parties, there will be disproportionate withdrawals of gas as between the wells; yes, or no? A. Yes.

BY MR. TAYLOR:

Mr. Chairman, that's all the questions we have.

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[380] CROSS EXAMINATION

BY MR. WATTERS:

Q. Would you please refer to the exhibit which you introduced? A. Yes.

Q. You show a well here, which is the Tomlinson Williamson Well in Section 21, Township 5 North, Range 19 West. Do you see that on your plat? A. Yes, I do.

Q. Actually, this plat doesn't show the—yes, that's the well. All right, did you write Tomlinson as operator of

[381] of that well indicating you would only purchase from that well from the nonsignatory parties? A. No, I did not.

Q. In other words, you are still purchasing gas from that well as you have in the past? A. That is correct.

Q. Referring to the Florida Gas-Barnes Well in Section 29, Township 5 North, Range 19 West, did you write Florida Exploration, operator of that well, and tell them that you would only purchase gas from signatory parties? A. Yes, we did under a letter dated May 19, 1982.

Q. And what is your contractual obligation under that well? A. We were, subsequently to that letter, notified by Florida that under the terms of their contract we were obligated to take all the gas they tendered under the Operating Agreement. We, obviously, sent that letter out in error and agreed with their interpretation of the contract.

Q. So, you are continuing to take the full stream from that well, is that correct? A. That is correct.

Q. Would that also be true of the other Florida Exploration well, which is the Carlisle 4-2? A. Yes, that is correct.

Q. With reference to the ratification that you testified to, have you accepted those ratifications yet, or are you [382] holding them in abeyance pending appointment of seller's representatives? A. We are presently holding them in abeyance. However, I think when we begin to receive the Tomlinson responses we would have no reason to hold them, since Tomlinson has indicated a willingness to act as seller's representative.

Q. If this Board does not enter an order directing Transco to take ratably, will you refuse to purchase the nonsignatory interests in the Getty wells and in the Tomlinson Willoughby Well? A. I have never refused to purchase it; I have offered a market.

Q. At $5.00? A. That is correct.

Q. But unless they are willing to sell at $5.00, you will refuse to take their gas, is that your position? A. That is correct.

BY MR. WATTERS:

That's all the questions we have.

BY CHAIRMAN FANCHER:

Any redirect, Mr. Stewart?

REDIRECT EXAMINATION

BY MR. STEWART:

Q. Mr. Taylor indicated that—asked you some questions about what Transco purchases under contracts that it has. You indicated that I had made a mis-statement with regard to Transco [383] purchasing gas under the Operating Agreement. When Transco enters into a contract with a specific seller, what is dedicated to Transco under that contract? A. A producer sells to us that which he owns, which is his interest in mineral leases that he has gotten from the mineral interest owners, as well as any fee acreage that the producer may have in acreage.

Q. This is dedicated under the terms of the contract, is that correct? A. Yes.

Q. Now, to the extent that that seller can also deliver to Transco, either in quantities in excess of his interest or quantities that are owned by other parties what factors are involved in Transco's decision of whether or not to purchase that gas? A. Well, that's purely a matter of negotiation as it was in the Florida agreement.

BY MR. TAYLOR:

Mr. Chairman, we renew our objection to this line of questioning.

BY CHAIRMAN FANCHER:

I think Transco's policies, Mr. Stewart, as to the negotiation of contracts is entirely irrelevant and immaterial. We have been through that before.

Q. (Mr. Stewart) Is gas sold under an Operating [381] Agreement dedicated to Transco for the term of the contract? A. No. Even in the contract where we have the obligation to accept delivery of gas that is being sold under the Operating Agreement, that is one-sided on the producer's part. We have the obligation to accept the gas, but if at any time those producers who are selling under the Operating Agreement should decide to market their gas with someone else, it's gone.

Q. So that when you purchase gas that was not dedicated to you under a contract, it's like purchasing on the spot market, is that correct? A. That's correct. We cannot use those reserves for purposes of securing financing or entering into the economics of whether it's economic to lay the pipeline—anything of that nature. Because it's gas, the authority under which it is being sold is revocable under the Operating Agreement.

Q. Mr. Watters asked you some questions with regard to what quantities of gas you are currently taking from the J. C. Williamson Well operated by Tomlinson, and the two wells operated by Florida, I believe the Carlisle and the Barnes Well. Has Transco curtailed the quantity of gas they are taking from those wells? A. We requested Florida under the May 19th letter, to reduce the quantities being delivered to us to the contract minimum quantities as set out in the contract.

Q. Is Transco currently taking quantities of gas [385] dedicated to Tennessee Gas Pipe Line Company from those wells? A. Yes, we are.

Q. Did Transco, in fact, reduce the quantities from those wells from the full allowable to the minimum contract

quantities required that it be taking? A. It's my understanding that we did.

BY MR. FRANKS:

She had stated earlier she didn't know what the take was, Mr. Chairman, now she has reconsidered and now knows.

BY MR. TAYLOR:

Mr. Chairman, we move to strike the last line of questioning on the grounds of lack of firsthand knowledge.

BY MR. FRANKS:

She said before she didn't know what the take was.

BY CHAIRMAN FANCHER:

That's true, but that's argumentative, and, Mr. Stewart, I don't know why somebody didn't object, but that was improper redirect, in my opinion.

BY MR. STEWART:

Yes, sir, I'm just trying to clear up some questions. That's all we have.

BY CHAIRMAN FANCHER:

Okay. Let me ask you a question. When Transco enters into a gas purchase contract, are they aware of the Rule 48? A. Yes, sir, when we contract to buy gas in any state, we buy it subject to the rules in the state. Just like when we [386] sent out the letter requesting that the operators cut back to only the gas which was under contract to us.

BY CHAIRMAN FANCHER:

Q. Yes, that's all very good, but what about ratable take without discrimination? When you come in here to purchase gas, don't you realize that your contract is subject, and that your purchasing and your distribution and sale of gas, is subject to Rule 48? If the rule is any good it's

part of your contract, isn't it? Or at least your operations are subject to it, are they not? A. That's correct.

BY CHAIRMAN FANCHER:

Thank you.

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Excerpts from the testimony of Claude Mullendore

[388]

CLAUDE H. MULLENDORE

Having first been duly sworn by the Chairman, testified as follows:

DIRECT EXAMINATION

BY MR. STEWART:

Q. Would you state your name and address, please? A. My name is Claude H. Mullendore, P.O. Box 1396, Houston, Texas 77001.

Q. What is your occupation and by whom are you employed? A. I'm Senior Vice-President of Gas Supply and RegulatoryAffairs for Transcontinental Gas Pipe Line Corporation.

Q. How long have you been employed in that capacity? A. As Senior Vice-President of Gas Supply, four years, and regulatory affairs responsibilities for approximately eight months.

Q. Would you briefly describe the duties and responsibilities that you have as Senior Vice-President of Gas Supply and Regulatory Affairs? A. Primary responsibility for the acquisition of long term reserves for Transcontinental Gas Pipe Line Corporation falls among my duties. That is limited to the lower 48 states. [389] Regulatory Affairs are relations and coordination of certificate of rate matters with the Federal Energy Regulatory Commission, and also, in Gas Supply are the duties relating to contract administration of all gas purchase contracts, along with producer rate matters involving our purchase gas adjustment filings with the FERC.

Q. Would you give the Board a brief description of your education and experience in the oil and gas industry prior

to assuming your present position with Transcontinental? A. I graduated from the University of Oklahoma with a B.A. in Government and Economics and an L.L.B. After serving in the United States Air Force as an Assistant Judge Advocate, I joined the firm and had a brief stint of duty as Assistant County Attorney in Oklahoma City, Oklahoma. I joined the firm of Kerr, Conn and Davis in Oklahoma City where I was employed as an associate with that firm for approximately five years. During that time my legal responsibilities with the firm had to do primarily with the oil and gas industry, representing, among other producer clients, Kerr-McGee Corporation. My duties involved preparation of all instruments involved in oil and gas, including gas purchase contracts for and on behalf of producer clients, plus all filings and practice by those producer clients for the then Federal Power Commission.

Subsequent to that time I became staff attorney for Cities Service Gas Company in Oklahoma City, primarily assigned to litigation duties for and on behalf of that company, and [390] with particular emphasis with certificate and regulatory matters before the, what was then called the FPC.

Subsequent to that time I was corporate counsel for Northwest Pipe Line, and had all the responsibilities for the running of the legal department of that corporation, with particular emphasis on the divestiture by El Paso Natural Gas Company of the properties which were then being assigned to Northwest Pipe Line Corporation under a mandate from the United States Supreme Court relating to an anti-trust violation by El Paso.

After approximately two years in those duties I became an assistant Vice-President with Transcontinental Gas Pipe Line Corporation and then was made Vice-President of Marketing for that company, with particular emphasis on marketing natural gas and policy witness before the Commission—before the then FPC, relating to certificate

matters and marketing matters for Transco. I was then made Vice-President of Marketing and Rates for Transco and assumed the duty of all rate filings and rate matters for and on behalf of Transco before the FPC. I was then made Senior Vice-President of Marketing and Rates, and then I assumed my present duties approximately four years ago.

Q. Mr. Mullendore, how long have you been actively involved in negotiation or the execution of gas purchase contracts with interstate pipeline companies either on behalf of producers or on behalf of the pipeline company? A. The first gas purchase contract that I ever saw [391] was in 1956, and for five years thereafter I handled all gas purchase contracts, either negotiation or preparation of those contracts for and on behalf of producer clients for the firm that I was associated with. After that period of time with Cities Service Gas Company, I was also in charge of giving legal advice to the management for gas acquisition activities. Cities Service was and is an interstate pipeline under the Natural Gas Act. After that, with Northwest Pipe Line, I was in charge of all the gas purchase acquisition activities during the period that I was there.

During the last four years I have been activiely involved, again, in the preparation and negotiation of gas purchase contracts for and on behalf of Transco.

Q. Are you familiar with the customs and practices of interestate gas pipeline companies with respect to the purchase of gas for transportation and resale in interstate commerce? A. I am.

Q. Are you familiar with the current statutes, rules, and regulations of the Federal Government, and particularly, the Federal Energy Regulatory Commission with respect to the purchase of gas for transportation and resale into interstate commerce by interstate pipeline companies? A. I am.

BY MR. STEWART:

Mr. Chairman, I am going to tender Mr. Mullendore as an [392] expert witness in the field of the purchase of gas for transportation and resale into interstate commerce.

BY CHAIRMAN FANCHER:

You haven't said a word about Rule 48, Mr. Stewart. I'm not sure I want to qualify this witness as an expert, but he probably is.

BY MR. FRANKS:

Mr. Chairman, we think the qualifications are irrelevant and immaterial to the matters before the Board today and if he is going to testify in that field, we will object and I don't think the witness should be allowed to be qualified in an area that does not involve whether or not Rule 48 and and the matters relating to Rule 48 are being observed by Transco or not.

BY CHAIRMAN FANCHER:

Well, I don't want to be discourteous to the witness, but I think that the purpose of your attempting to qualify him as an expert, Mr. Stewart, is entirely irrelevant to this hearing.

BY MR. STEWART:

Mr. Chairman, if I might state, the purposes of this hearing is directly concerned with the purchase of gas, and as we will show, it is concerned with the purchase of gas by an interstate pipeline company.

BY CHAIRMAN FANCHER:

Mr. Stewart, I don't care if it's interstate or intrastate. Are you in violation of Rule 48, or are you not? It's [393] just as simple as that to me. But anyway, let the record show that the qulaifications of the witness are accepted for the purposes that Mr. Stewart has identified,

but I don't think we are going to let him testify along those lines. I don't see where his expertise in negotiations or pipeline contracts and the purchase of gas and that sort of thing is material to the hearing. Obviously, he has had broad experience in that field.

BY MR. FRANKS:

Mr. Chairman, he hasn't testified that he is familiar with the rules and regulations of this Board either.

BY CHAIRMAN FANCHER:

I understand that.

BY MR. FRANKS:

I think he is not qualified to testify as an expert witness unless he is familiar with the rules and regulations of this Board.

BY CHAIRMAN FANCHER:

He is an expert on the Federal rules and procedures and so forth, Mr. Franks, and that's what he asked that he be qualified as an expert, and I think he is. I would have to agree with that. But I think the Board wants to hear some testimony about Rule 48.

BY MR. STEWART:

Mr. Chairman, of course, we have submitted briefs on this particular point, but we certainly do feel that it is [394] very revelant as to whether or not it's an interstate pipeline company or an intrastate pipeline company, and we certainly feel that the extent to which the interstate pipeline company is governed by rules and regulations with other bodies is also entirely relevant. And to the extent to which they conflict with this Board's authorities or rules is also entirely relevant in the proceedings here to determine whether or not Transco should be adjudged in violation of Rule 48.

BY MR. FRANKS:

Mr. Chairman, I think what Mr. Stewart wants to prove is what the law is, and I think the briefs have set forth what the law may or may not be, and what he wants to say—is to have this witness to testify as an expert witness what the law is.

BY CHAIRMAN FANCHER:

We are not going to let him do that.

BY MR. FRANKS:

I think the Board has competent counsel to determine what the law is, and this witness shouldn't be allowed to testify as to what the rules and regulations and law of the Federal Energy Regulatory Commission is and what the Federal decisions are and things of that nature. If he is going to testify about that, that's already been covered in briefs and I think it's a waste of the Board's time to get into that, and especially, us lawyers try to tell the Board what we think the law is and we don't swear ourselves in as experts in the field to do it.

[395] BY MR. STEWART:

Mr. Chairman, the purpose of my questions of this witness are not to let him state his opinion as to the law; the purpose is to present facts to the Board which we believe will demonstrate to the Board that Transcontinental is under jurisdiction and is under particular orders and other facts which play an important part in this determination as to how much gas it can take, what prices it can pay for that gas. And to the extent that the plaintiffs contend that price is an element of discrimination, we, in order to present our case, must be allowed to explain to the Board why it is offering to pay the amount it is offering to pay and why it is not offering to pay the amount that the petitioners apparently want this Board to force them to pay.

BY CHAIRMAN FANCHER:

Mr. Stewart, could we say you are talking about market demand? You have an over-supply——

BY MR. STEWART:

That will be one of the elements we will discuss, Mr. Chairman. The other important element involved is the price at which the petitioners are requesting this Board to order Transco to pay——

BY CHAIRMAN FANCHER:

We are not going to order Transco to pay anything. That is not within our jurisdiction.

[396] BY MR. FRANKS:

Mr. Chairman, we will stipulate that Transco is a pipeline company subject to the jurisdiction of the Federal Energy Regulatory Commission.

BY CHAIRMAN FANCHER:

That's very obvious, yes, sir. I don't see anything in Rule 48 which makes any distinction between interstate or intrastate or any other kind or purchasers.

BY MR. STEWART:

Yes, sir——

BY CHAIRMAN FANCHER:

No, it says every purchaser, Mr. Stewart. You read the rule. It's just four lines.

BY MR. STEWART:

Yes, sir, I'm quite aware of what the rule says, but the fact is, Your Honor, this rule has been, to the best of our knowledge interpreted only once some 20 years ago. And the Board's interpretation of its own rules as to who it may or may not apply to, is certainly at issue in this hear-

ing at this time, and to the extent which we do not know that issue has ever been raised before this Board before.

BY CHAIRMAN FANCHER:

No, sir.

BY MR. TAYLOR:

Mr. Chairman, the petitioner, Coastal, would ask the [397] Board to inquire of counsel whether they are offering an excuse for violating Rule 48 and are admitting that they are violating it. The thrust of the statement is that they propose to show the Board why they feel it's necessary to violate the rule. The thrust of it is that apparently they are violating the rule.

BY MR. STEWART:

I'm not even going to respond to that, Mr. Chairman.

BY CHAIRMAN FANCHER:

All right, Mr. Stewart. Go ahead and we will see how far we will let you go, okay?
(Examination continuing by Mr. Stewart)

Q. Mr. Mullendore, is Transcontinental Gas Pipe Line Corporation an interstate pipeline company? A. It is.

Q. What distinguishes an interstate pipeline company from what is known as an intrastate pipeline company? A. Well, one of the most important aspects is the jurisdiction under which each of the different type of pipeline companies are regulated. Interstate pipeline companies, obviously, are regulated currently by the Federal Energy Regulatory Commission. Intrastate pipeline who buy for resale solely within the state in which the gas is purchased, may or may not have certain of their rates regulated by the Public Utility Commission, whatever the appropriate governmental authority might be called. Our rates, that is, interstate pipeline company rates, rate schedule, resale rates, authority to construct [398] facilities, what is proper

to be put into our rates, are all subject to the FERC jurisdiction.

Q. Is Transcontinental Gas Pipe Line taking——

BY MR. FRANKS:

Mr. Chairman, as I understand it, the witness is going to get into the profitability of Transco in the interstate pipeline business—as I understand it—because his rates are subject to it. The question as to whether it's profitable or not—I can't understand—we have already stipulated that they are an interstate pipeline company subject to the jurisdiction of the FERC.

BY CHAIRMAN FANCHER:

Are you objecting, Mr. Franks?

BY MR. FRANKS:

I think we are wasting time.

BY CHAIRMAN FANCHER:

Well, as I said yesterday, this thing is probably not going to be decided by this Board, but anyway, Mr. Stewart, he has admitted that you are an interstate pipeline company, and it's subject to the jurisdiction of the Federal Energy Regulatory Commission or agency, or whatever it is. I can't see the materiality of it.

BY MR. STEWART:

Mr. Chairman, again, we have indicated we are going to put on proof that this gas immediately upon—it's purchased by Transcontinental into the interstate system and to that extent [399] it is under the jurisdiction of the Federal Power Commission.

BY MR. FRANKS:

We will stipulate to that, Mr. Chairman.

BY MR. STEWART:

That's fine. I won't proceed any further with that testimony.

BY CHAIRMAN FANCHER:

Are you saying that we don't have jurisdiction of this matter?

BY MR. FRANKS:

Well, it's not under the—in that it goes into Interstate Commerce, we are not going to say that this gas is subject to the jurisdiction of the FERC.

BY CHAIRMAN FANCHER:

It's produced in Mississippi, isn't it?

BY MR. FRANKS:

Yes, sir, but it goes into Interstate Commerce. We are not going to stipulate any further than that.

BY MR. STEWART:

Mr. Chairman, my brief in this matter on these jurisdictional issues. I'll be glad to restate it for the Board, but it is our opinion and it's our position that the Board's jurisdiction over this matter does not include jurisdiction over the purchase of gas by an interstate pipeline company.

BY MR. TERRELL:

And Mr. Chairman, I refuse to stipulate to that.

[400] BY MR. FRANKS:

I do too.

BY CHAIRMAN FANCHER:

Mr. Stewart, let me be real candid with you. At first I had some very serious reservations about the authority of this Board to adopt Rule 48 in the first place. I have

had briefs from you—yours was about that thick. I had a brief from Mr. Terrell, I had a brief from Mr. Franks, Mr. Taylor, a brief from Mr. Waller, I had a brief from Mr. Watters. I read them every damn one, and I'm being paid about fifty cents an hour sitting up here doing this job. But I have convinced myself that Rule 48 is valid, and that the Board has the authority to adopt it. I don't know how we are supposed to enforce it, except to determine whether or not it is being violated. And I think that is our only authority. I can't help it if it's interstate or intrastate or municipally owned, or whatever. Go ahead.

BY MR. STEWART:

That clarifies your position, Mr. Chairman. (laughter)

BY MR. TAYLOR:

Mr. Chairman, for the purposes of the record the petitioner, Coastal, would ask are we on an offer or proof, or are we on the record?

BY CHAIRMAN FANCHER:

No, sir, we are on the record.

[401] BY MR. STEWART:

Q. Mr. Mullendore, is it the custom and practice of an interstate gas pipeline company when it enters into a gas purchase contract to agree to include gas sold to them under an Operating Agreement or other similar agreements between producers under minimum take obligations that may be included in that contract? A. Not in my opinion.

Q. Why not? A. First of all, all of the financing instruments under which pipelines finance their construction and all of the sales contracts under which they resell their gas provide and will require dedication of long term reserves under the contract.

BY MR. FRANKS:

Mr. Chairman, I move that the answer and the question—the answer to the question is irrelevant because it's been shown that in each and every instance in this case Transco did take the nonsignatory parties gas under the Operating Agreement. So, if his testimony is customary, these are not customary, none of them are customary. So, in this instance his answer is irrelevant because in each instance Transco has already purchased that gas under the Operating Agreement in every instance we have in the six wells involved.

BY MR. STEWART:

Mr. Chairman, the petitioner obviously thinks custom and practice is important because they put on proof on the [402] customs and practices of selling gas. We are clearly refuting that and putting on evidence in rebuttal of that. It's our position that gas purchase contracts are not made to include owners who do not sign that contract. That is not the custom and practice; that the contract at issue here, the contract between Getty and Transcontinental, is along that line, and the fact that Transco has taken gas from these wells not under that contract does not mean that they are obligated to take that gas under any contractual terms that may be in that field.

BY CHAIRMAN FANCHER:

Mr. Stewart, I think we went all over this yesterday. This Board is not here to interpret any contract. It's not here to make a contract or change a contract. We are here to dertermine whether or not Transco is now engaged in the business of purchasing oil or gas from owners, operators and producers, and that they shall purchase without discrimination in the favor of one operator, owner or producer against another in the same common source of supply We are not going to interpret the contract. I told you

yesterday you can go down to Pascagoula Street and get that done.

BY MR. STEWART:

Mr. Chairman, it's a question of interpretation of Rule 48. We take the position that discrimination does not mean under the same terms and conditions that some other interest owner in that field or in that well is selling gas.

[403] BY CHAIRMAN FANCHER:

Well, what does it mean?

BY MR. STEWART:

It means allow somebody equal access to a market; to a quantity. Now, if the Board is willing—if the Board would tell us what their interpretation is, then we won't get involved in the terms and conditions. But to the extent that the Board has to determine if there has been a violation, then they have got to interpret that rule.

BY MR. FRANKS:

Mr. Chairman, Coastal has had equal access to that market, the same market and they had equal access to it and they were complying with Rule 48 up until July 1. They are now in violation of Rule 48 because they have denied access to Coastal to that market, that equal market that he is referring to.

BY CHAIRMAN FANCHER:

Of course, they say they don't, Mr. Franks, that they make the market available to them but on different terms and conditions. Go ahead, Mr. Stewart.

BY MR. TAYLOR:

Mr. Chairman, Petitioner, Coastal object to counsel for Transco continuing to make his closing statements during the course of the examination of the witness and would request that they limit the questions and answers and to

be responsive to your rulings on objections and we can all be out of here early.

[404] BY MR. STEWART:

Mr. Chairman, I think Mr. Taylor is asking me not to respond to your questions.

BY CHAIRMAN FANCHER:

I think so too, Mr. Stewart. I'll have to agree with you for a change. Go ahead.

(Examination continuing by Mr. Stewart)

Q. Did you complete your answer to my previous question? I believe you were interrupted. Let me, if I could, restate the question. Is it the custom and practice of the interstate gas pipeline companies when entering into a gas purchase agreement to agree to include gas sold to them under Operating Agreements or any other agreements among producers under the minimum take obligations that may be included in that contract? A. I think I got as far as the financing instruments requiring dedicated reserves under contract for purposes of financing construction of pipelines. In addition, FPC and now the FERC requires certain dedicated contracts of reserves to back up requests for construction and certification of facilities necessary to transport and acquire such reserves. They do not take into account reserves purchased under an Operating Agreement with no contractual obligations. For purposes of testing debt coverages under debentures, independent engineers certificates must be obtained, and they do not take into account reserves so acquired under Operating Agreements. All of those [405] reasons, in addition to the resale contracts that we long term, resale contracts that we have necessary to supply gas to resale distributors and customers require long term reserve dedication. And those that are not under contract cannot qualify.

Q. Would such an obligation included in a gas purchase contract affect your ability to directly contract with other owners in the same pool or well? A. Well, obviously, it gives them the opportunity at some subsequent date to sign contracts with other pipeline companies, be they intra or inter, since there is no contractual obligation to take nor to deliver.

Q. Are you familiar with the terms and conditions of the gas purchase contract between Transco and Getty in the Newsom Field dated August 6, 1980, and which was ratified by Tomlinson with respect the Willoughby Well in those fields? A. Yes.

Q. Does this contract obligate Transco to purchase any gas owned by other parties——

BY CHAIRMAN FANCHER:

Mr. Stewart, I just don't want to hear anything about the terms of that contract now.

BY MR. FRANKS:

We object to it.

BY CHAIRMAN FANCHER:

Let's talk about ratable, nondiscriminatory take. I don't care what kind of contract they have got or what kind of [406] contract they don't have. That's not a matter for this Board to determine.

Q. (Mr. Stewart) Has Transco in the past taken gas from these wells that it was not contractually obligated to take? A. Yes.

Q. Would you explain why? A. There are essentially two reasons: one, the demand for natural gas in the market area—Transco's market area, was of sufficient quantity that these volumes could be taken. It did not—by so taking they did not cause a reduction in the reserves—long term reserves then currently dedicated to Transco. And, in fact,

assisted in the building up, somewhat, the reserve situation that Transcontinental had at that time.

Q. Has Transco instituted a policy in all of its purchasing markets of not purchasing gas at this time that it is not contractually obligated to take?

BY MR. FRANKS:

Mr. Chairman, we object to the question as being irrelevant and immaterial.

BY CHAIRMAN FANCHER:

I sustain the objection; policy has got nothing to do with it. Get back to Rule 48, Mr. Stewart, if you can find your way back to it. You know, I know and you know that they are going to buy the gas they can sell and they are not going to buy it if they can't sell it. That's what you are talking about.

[407] Q. (Mr. Stewart) Mr. Mullendore, can at this time Transco sell all of the gas that it is contractually obligated to take?

BY MR. FRANKS:

We object to that question as to not being relevant and material to the issues involved here.

BY CHAIRMAN FANCHER:

I sustain the objection. That, again, is a matter of contract. If they are obligated to buy it, they have got to buy it, whether they sell it or not.

Q. (Mr. Stewart) Mr. Mullendore, can Transco as of today sell gas on its distribution market that it is not contractually obligated to buy?

BY MR. FRANKS:

We object to the question as being irrelevant and immaterial to the issue involved here as to whether they are taking ratably from these six wells without discrimination.

BY CHAIRMAN FANCHER:

I wish I was somewhere else, Mr. Franks. I must sustain the objection. We are getting down to the matter of contract and we are talking about market demand, and I just can't see that that has anything to do with it, Mr. Stewart.

BY MR. STEWART:

Mr. Chairman, for four years now we have not had to worry about market demand.

[408] BY CHAIRMAN FANCHER:

I understand that.

BY MR. STEWART:

We are going to have to worry about it now and it does affect the ability of the pipelines to take gas from the state of Mississippi.

BY CHAIRMAN FANCHER:

I understand that.

BY MR. STEWART:

It has got contractual obligations that they have got to meet, and if they cannot sell the gas that they don't have contractual obligations to buy, then what are they supposed to do with the gas?

BY MR. FRANKS:

They are supposed to take into consideration when they buy the gas in Mississippi that it's subject to the rules and regulations of this Board, that's what they are supposed to take into consideration, Mr. Chairman. If they can't comply with them, they shouldn't buy the gas in this state.

BY CHAIRMAN FANCHER:

I'm not going to answer your question, Mr. Stewart, I don't think you would like it.

Q. (Mr. Stewart) Mr. Mullendore, does the present purchase of gas from East Morgantown and Greens Creek Fields impact your ability to sell the gas that you transport into Interstate Commerce——

[409] BY MR. FRANKS:

We object to the question as being irrelevant and immaterial to the issues involved here as to whether they are taking ratably and without discrimination from the parties in the six wells in question.

BY CHAIRMAN FANCHER:

I sustain the objection. Mr. Stewart, I think probably that all of these plaintiffs would stipulate with you that there is a glut of gas on the market today and that Transco has difficulty in disposing of the gas that they are obligated to purchase, much less additional gas, if that's what you are trying to prove, which I don't think has anything to do with the question.

BY MR. STEWART:

Mr. Chairman, I can probably ask a couple more questions if the Board will state that the price to which Transco is obligated to pay for this gas is not a matter of discrimination before this Board in determining a violation of Rule 48. Again, we have offered a market; the only difference in the terms and conditions is as to price, and that's the issue right here. We can close up shop and go home, if this Board will so rule.

BY CHAIRMAN FANCHER:

No, I don't think we are going to tell you that. That is a matter for the Board to determine.

BY MR. STEWART:

Mr. Chairman, I certainly think that Transco should be [410] allowed to put on evidence of the reasons why it has offered the price that it has. I would certainly think that

would be relevant to the Board, and it has to do with the ability to sell gas.

BY MR. FRANKS:

Mr. Chairman, we think it does not. We object to that. We think it does not under Rule 48, and we don't think this line of questioning is relevant to the issue.

BY CHAIRMAN FANCHER:

Go ahead, Mr. Stewart, we will let you make your record. On the record.

BY MR. STEWART:

Thank you.

BY MR. FRANKS:

Mr. Chairman, are you going to—I didn't understand.

BY CHAIRMAN FANCHER:

Mr. Franks, I don't really know what the outcome of this things is going to be down the road. I don't know whether the terms and conditions from $7.90 some-odd cents a MCF, which they have been paying for it, I understand, up until this date, and an offer to—well, with notification that they are not going to take it any longer unless they can take it at $5.00 with a market out provision, with a requirement that all of the small interest owners—nonsignatory interest owners select and designate an agent to represent them. I really don't know [411] whether that would be the criterion for enforcing Rule 48 or for adopting an order finding that they are in violation of Rule 48. Because, as I said, I don't think this Board is going to make the final decision. So, let's let him go ahead, if he will, but I think we already know all of that stuff.

BY MR. FRANKS:

Mr. Chairman, in order to expedite the matter, may I

have a continuing objection to all testimony of this witness until I notify the Chairman to the contrary?

BY CHAIRMAN FANCHER:

All right.

BY MR. STEWART:

Mr. Chairman, I think we would have saved a lot of time if the petitioner at the beginning of our presentation of our evidence had made that announcement.

BY CHAIRMAN FANCHER:

Okay, go ahead.

Q. (Mr. Stewart) Mr. Mullendore, did Transco institute a policy not to purchase gas that it was not contractually obligated to take or was not contractually dedicated to be delivered to them? A. Yes.

Q. Would you explain when this policy was instituted and why? A. It was instituted in approximately mid May, the [412] reasons why is that at that time we had approximately 420 million cubic feet of gas in fields that the reserves to which were dedicated to Transco cut back, and we found a further reduction in the market to the—as a result of which we had to reduce our cut backs to a total of approximately 520 million cubic feet a day. The market, as we stated in our market out letter, was softening as a result of the lower oil prices, particularly, with relation to number six fuel oil high sulphur content, which market is primarily for boiler fuel purposes and the impact of which we felt in our markets in North Carolina, South Carolina, parts of Virginia and Georgia. We had escalating costs in our gas purchase costs, and we needed to effectuate a program to reduce those costs, which resulted in market out letters being sent out and any and all surplus sales, that is, gas when we weren't contractually obligated to take to be cut off.

Q. Would you explain to the Board how the—what impact, if any, there is over the fact that the gas produced from these two fields is classified as high cost gas on your loss of market and your ability to continue to pay prices when you were not contractually obligated to do so? A. Our purchase gas costs are flowed directly through to the consumer as a result of purchase gas adjustments filings which we make with the Federal Energy Regulatory Commission. Currently, we make those filings twice a month—twice a year. [413] In mid March, as a result of conversations which the marketing department had with several of our distributors—customers, concerning the price of gas which became effective in March as a result of PGA, was having on their ability to continue to serve markets in direct competition with number six fuel oil of a high sulphur content type, and I'm talking about three percent. We evaluated what our gas purchase costs would be in September of this year as a result of escalating costs, both in the high cost area and in gas which is currently classified by the Commission in the 102, 3, 4, 5 categories. The Natural Gas Policy Act provides for an automatic escalation on a monthly basis for those classifications, without regard to what is happening in the market. As a result of those conversations and correspondence with our distributor customers and surveys that our marketing department took, it was determined that he had lost at that time to number six fuel oil high sulphur. And in some instances medium sulphur in the two percent range, approximately 95 to 100 million cubic feet of gas per day. The high sulphur, or the number six low sulphur, the market had not yet been impacted because that, obviously, costs most than the high sulphur content. We determined that in September when we filed our next PGA that we might experience increases as much as 65 to 70 cents increase in just our gas costs. In addition, we had a general rate increase then pending before the Federal Energy Regulatory Commission for which we had asked for an additional 35 cents.

That figure escapes me, [414] but I think it's about that, an increase due to increased facilities going into service and increased costs of doing business. So that we could see in addition to the market that we lost as a result of the March 1982 PGA that further the market loss would be experienced in September and October.

Q. What percentage—you indicated a loss of Transco's market of approximately 95 million cubic feet a day; what percent of your total resale market does that account for? A. That is in the range of about—and I'm talking about just related to that market, of about four percent, five percent, of our then daily flowing supply that we were sending to the market. On a system like ours, gas taken in the field either goes to the market and is burned, or it goes in storage. We had, thank goodness, a slightly colder than normal first quarter, so that our sales up until that time had stayed up, because it was primarily heating load. But going into the summer where boiler fuel sales become important along the system and industrial sales, and particularly, with the sales in September and October, we assumed that we would have, and assumed on the basis of discussions with the customers, that we would have a further market loss than what we had hoped for this year. We exercised the market out which reduced our prices somewhere to around 15 to 20 cents in the September PGA.

Q. When you say you exercised the market out, would you explain that a little, please? [415] A. Well, we sent out letters to producers whose contracts contained a market out and reduced the price that we were then currently paying to $5.00 per MMBTU, including taxes and all other costs. At that time about 10 percent of our flowing supply had been designated high cost gas. In looking at the gas cost, that 10 percent made up about 26 percent or 28 percent of our total gas costs. So, that was the situation in mid May.

Q. What was the purpose of attempting to reduce the price that you were paying for high cost gas? A. Obviously, it was an attempt to continue sales that we had hoped we would make in direct competition with number six fuel oil high sulphur and to keep the demand for gas up on our system so that we would not experience a further loss of market and worsen the situation of having to cut back further on the fields where we were taking gas under contract.

BY MR. FRANKS:

Mr. Chairman, of course that statement of what they are taking and not taking ignores the Rule 48 that we have.

BY CHAIRMAN FANCHER:

I understand that.

BY MR. FRANKS:

Without regard to Rule 48.

BY CHAIRMAN FANCHER:

It's all very interesting, Mr. Stewart, but I don't think you have told anybody anything we didn't already know. [416] They probably made some bad contracts, if you want to know the truth about it.

BY MR. STEWART:

I'm trying to prevent making any more, Mr. Chairman.

BY CHAIRMAN FANCHER:

I understand.

Q. (Mr. Stewart) Mr. Mullendore, does Transco at this time have a higher daily supply of gas than it can sell on its resales market? A. Yes.

Q. What is being done with this gas? A. It's being cut back in the fields.

Q. Are you cutting back your daily supply to exactly what you are able to sell on the resales market? A. That's correct.

Q. Are you storing any of this gas? A. Transco does not store gas for itself except with, I think, some 11 billion cubic feet of storage space, which is dedicated for entire system use. The other 160 billion cubic feet—170 billion cubic feet of storage is operated by Transco as a sort of warehouse. Customers buy the gas on a daily basis and nominate it either into storage or nominate it to the market to be burned. We operate a little bit different pipeline system with respect to storage than other pipelines do.

Q. Has Transco curtailed its gas takes to just high cost gas fields, such as, Greens Creek and East Morgantown Fields? [417] A. No.

Q. Is Transco currently not taking gas that it is contractually obligated to take? A. Yes.

Q. Approximately how much? A. The volumes that we can cut on the system currently without incurring take or pay obligations, is in the neighborhood of 200 million cubic feet of gas a day. Any gas that we cut below that, and do not make up on an annual basis, you incur take o pay on. So, currently, we have about 320 million of gas that we are incurring potential take or pay on.

Q. When you say "incurring take or pay" do you mean that you are obligated to pay for that gas even though you cannot take it? A. Yes, if the situation continues, we have incurrred currently about 70 million dollars of take or pay. We anticipate, because of the expiration of annual contract years or periods, that we will incur probably another 30 to 50 million dollars or take or pay by October 1 of this year.

Q. How does that impact your resale or your distribu-

tion market? A. Well, it drives the price up because we have to finance——

BY MR. FRANKS:

Mr. Chairman, as I understand it, we are now letting him make a record on all of this? Of course, I have a continuing [418] objection on all of this, but I just think we are unnecessarily prolonging this hearing with all of this testimony.

BY CHAIRMAN FANCHER:

I think so, too, Mr. Franks. I don't really want to cut you off, Mr. Stewart. I would like for you to make all of the record that you would like to, but insofar as I'm concerned, the other Board members may have different ideas, but I don't think the trials and tribulations and the troubles of Transco has anything to do with any part of this hearing. Like I say, Rule 48 is what we are here to talk about. And whether they can sell it or can't sell it, Rule 48 doesn't say anything about that.

BY MR. STEWART:

Yes, sir, but I think the Board is determining whether or not there is a violation of Rule 48. Is the Board saying their problems in paying a higher price for gas is not a factor?

BY CHAIRMAN FANCHER:

I don't think it is. It looks to me like we are getting right down to the question of whether or not Rule 48 is a valid rule and how it is to be applied. I mean, I think the facts are clear already. The way Mr. Mullendore is talking, Transco is in trouble. It kind of sounds like they may be.

BY MR. FRANKS:

They are not.

BY CHAIRMAN FANCHER:

It kind of sounds like they may be.

[419] BY MR. STEWART:

They would not like to be in trouble.

BY CHAIRMAN FANCHER:

I understand that.

Q. (Mr. Stewart) Mr. Mullendore, none of, or very few of your contracts require that you take 100 percent of the deliverability of a well, is that correct? A. Not very many.

Q. If Transcontinental is required to continue to take 100 percent deliverability from wells in these fields, how will that affect Transcontinental?

BY MR. FRANKS:

We object to the question, Mr. Chairman. If he is trying to say that, you know, if we can take Getty's gas and not take these little guy's gas, like Coastal. if that will help us out, that's what we want to do. But, you know, if we take their gas, we might get in a little trouble, and that is immaterial and irrelevant. It means if we can go ahead and violate Rule 48, we will come out all right, but if we have to comply with Rule 48, we might be in a little trouble, and that is not the issue. The issue is whether they are violating it or not, not an excuse for violating it and how it affects the financial structure of Transco.

BY MR. STEWART:

Mr. Chairman, it's our position that Rule 48 is not being violated, because these people have been offered "a chance" to sell their [420] share of gas.

BY CHAIRMAN FANCHER:

All right. Well, why do you need to get into all this other stuff, Mr. Stewart?

BY MR. STEWART:

Because the Board—because the petitioners obviously disagree with the position and the Board has said they are going to make a determination on what discrimination is. We are simply trying to show the Board that Transco——

BY CHAIRMAN FANCHER:

You have said you have offered them a market; is that what you said?

BY MR. STEWART:

Yes, sir, we are offering them a market today.

BY CHAIRMAN FANCHER:

Okay. If he can't sell the gas he has already got, how is he going to sell the gas under that market, at any price?

BY MR. STEWART:

We will explain it.

BY CHAIRMAN FANCHER:

I think you are getting way outside the scope of the hearing, Mr. Stewart.

BY MR. FRANKS:

Mr. Chairman, here is a public newspaper regarding how they are handling this cheaper gas right there from the Oil Daily.

[421] BY MR. STEWART:

Mr. Chairman, I believe I'm putting my case on, and I was very patient with Mr. Franks and Mr. Taylor when they put their case on, and I would appreciate an accomodation of sorts for me.

BY CHAIRMAN FANCHER:

I'm not going to read the paper. Mr. Waller?

BY MR. WALLER:

I think the Board is inclined to let the record cover whatever Mr. Stewart and Transco might want to leave in the record. If we could go with a proffer here and let Mr. Mullendore read his statement into the record, I think we could get through with this in a few minutes, because he is an attorney and I think he knows what he wants the record to reflect about Transco's plight in marketing and balancing out agreements and marketing out agreements.

BY CHAIRMAN FANCHER:

Could you do that, Mr. Stewart?

BY MR. STEWART:

Mr. Mullendore is not on the stand as an attorney; he is on the stand as a witness, and he is not prepared to issue a statement. If the Board had said they would like a statement, we could have saved a lot of time preparing testimony.

BY CHAIRMAN FANCHER:

All right, sir, go ahead, I want you to make your record.

BY MR. FRANKS:

We have a continuing objection.

[422] BY CHAIRMAN FANCHER:

Yes, sir.

Q. (Mr. Stewart) Mr. Mullendore, my last question I asked was: if Transco is required to take maximum deliverability from these wells, how will it impact Transco?

BY CHAIRMAN FANCHER:

I don't think we are going to require them to take any gas at maximum deliverability. And how it would impact

Transco, I think is entirely immaterial, even if we did do that—if we could do that.

BY MR. STEWART:

Do I understand, Mr. Chairman, that you are saying you don't know whether you can require them to take at maximum deliverability?

BY CHAIRMAN FANCHER:

I think we can require them to take it ratably and nondiscriminatorily, Mr. Stewart. How it would impact them or how it would affect them, I don't think is material.

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[424] Q. How does the price that you are currently offering these producers in return for the dedication of their gas to Transco compare with the prices that Transco is currently offering for any new contract on high cost gas in Mississippi or in any other state? A. We are not currently offering any new contract for high price gas at $5.00. So, to that extent it would be in tune with what we are paying our affiliate and also the people that we have exercised the market outs on.

Q. In your opinion is the present market price for high cost gas any higher than what Transco has offered to producers in these three wells? A. It is no higher.

Q. If Transco was required to purchase this gas at a price which is higher than they are contractually obligated or willing to pay, what impact would this have on Transco's interstate business? A. It would increase our gas costs, in addition to the gas costs that I have already discussed, and it would require us to cut back on other contracts on a one for one ratio.

Q. When you say "other contracts" other purchase contracts? A. Other purchase contracts, yes.

Q. Would these purchase contracts be in Mississippi or [425] in other states? A. It could be anywhere.

Q. To your knowledge is Transco the only pipeline facing the loss of market due to the increase in quantities and cost of high cost gas? A. To my knowledge it is not the only one.

Q. Even though this gas has now been classified as high cost gas under the Natural Gas Policy Act, is Transco's purchase and transportation and resale of this gas still regulated by the FERC? A. It is.

Q. Would you explain how it is continued to be regulated? A. The purchase gas costs that an interstate pipeline company pays for gas is passed along, as I have stated, in the semi-annual PGA. That's all subject to review by the FERC, not only with respect to the reasonableness of the prices under Section 601-C of the NGPA, but also with respect to whether the pipeline company is contractually obligated to pay any price, whatever the price may be, with respect to any of its contracts. Those PGA filings are subject to suspension by the FERC, and the FERC has investigative authority to determine the reasonableness of those costs.

Q. To what extent has the gas purchase contracts in East Morgantown and Greens Creek Field, as well as other high cost gas fields in the state of Mississippi, been subject to the [426] investigations by the FERC?

BY CHAIRMAN FANCHER:

What has that got to do with Rule 48, Mr. Stewart? You know, I'm just sitting here kind of—you know, what has the FERC got to do with this hearing?

BY MR. STEWART:

Mr. Chairman——

BY CHAIRMAN FANCHER:

I know they are subject to their regulations, and I know that when you are subject to the regulations of a federal agency, excuse me, John, you have got troubles.

BY MR. STEWART:

Mr. Chairman, we have got real troubles if we have got two orders from two different agencies that tell us to do two different things. That's the whole point of it.

BY CHAIRMAN FANCHER:

They haven't told you not to buy that gas, have they? Ratably, and without discrimination?

BY MR. STEWART:

I'm going to defer that to my expert.

BY CHAIRMAN FANCHER:

I don't believe they have done that.

BY MR. FRANKS:

The best evidence would be a copy of the order.

BY CHAIRMAN FANCHER:

Go ahead.

[427] Q. (Mr. Stewart) Mr. Mullendore, have you been required to file gas purchase contracts that are currently in effect in East Morgantown and Greens Creek Field with the FERC in connection with the NGPA dockets? A. We have filed pursuant to the administrative law judge's decision, all of our contracts. As a result of an investigation of our PGA filings commencing back with February 1981. That PGA filing was challenged on the basis that our gas purchase practices, particularly, with respect to purchase of high cost gas and prices paid for it, was in violation of Section 601-C of the NPGA. In nu-

merous allegations with respect to the contractual provision relating to take or pay and definite price escalations, the amounts paid for high cost gas, the volumes of high cost gas that were purchased, particularly with respect to the North Carolina Commission and the New York Public Service Commission, and concerning the impact of those purchases on markets of their distributor customers which they regulate. Two subsequent PGA filings were protested. We were required in the February 20 order of the FERC to file all contracts, who we were dealing with, who the other purchasers were in the field, what the other terms and provisions were; everything required in Appendix B to that FERC order with respect to all gas contracts.

Q. What investigation was made and what affect did it have in the investigation with respect to gas that Transco was not contractually obligated to take and was not dedicated [428] to Transco, but for which Transco was paying high cost gas prices? A. Inquiry was made, my recollection, as to whether Transco had exercised market outs, what they had done to keep the prices down, whether we were purchasing—whether we had exercised contract minimums under the contract, whether we had evaluated whether the producers were delivering just the gas that was under contract, etcetera. I was asked over a period of two days on the witness stand concerning all questions about as many of the high cost contracts as I would like to remember.

BY MR. STEWART:

Mr. Chairman, in connection with his testimony I would like to offer into evidence a copy of the orders of the FERC relating to the suspension of filing.

BY CHAIRMAN FANCHER:

I'm not going to allow that.

BY MR. FRANKS:

We object to that.

BY MR. STEWART:

May I proffer it for the record?

BY CHAIRMAN FANCHER:

You may make it for identification for purposes of the record, but I don't care what FERC said about this. You may mark it for identification.

(SAID DOCUMENT WAS MARKED AS EXHIBIT 1 TO THE TESTIMONY OF MR. MULLENDORE, FOR THE PURPOSES OF THE RECORD ONLY, AND APPEARS AS FOLLOWS:)

Exhibit 1

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. TA81-1-29-002

TRANSCONTINENTAL GAS
PIPELINE CORPORATION

NOTICE OF INTERVENTIONS, PROTEST AND MOTION FOR SUSPENSION AND HEARING OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK AND THE NORTH CAROLINA UTILITIES COMMISSION.

The Public Service Commission of the State of New York (New York) and the North Carolina Utilities Commission (North Carolina) herewith give notice, pursuant to the provisions of Section 1.8(a) of the Commission's Rules of Practice and Procedure, of their intervention as parties in the above designated proceeding. For the reasons detailed below, New York and North Carolina are convinced that the Commission cannot find that the increased rates which would be made effective by the instant PGA filing by Transcontinental Gas Pipeline Corporation (Transco) are just and reasonable within the meaning of Sections 4 and 5 of the Natural Gas Act and Section 601(b) of the Natural Gas Policy Act (NGPA), or appropriate for pass through under Section 601(c) of the NGPA. In addition, New York and North Carolina are convinced that the controllable price escalations indicated in the instant PGA filing by Transco are so high, both absolutely and in relation to the price of various categories of oil serving as a major alternate fuel in the markets served by Transco, as to mandate a thorough investigation of Transco's gas purchase operations pursuant to Section 14 of the Natural Gas Act.

2. Correspondence and pleadings relating to the intervention and participation in the proceeding by New York should be addressed to:

Peter H. Schiff
General Counsel
Empire State Plaza
Albany, New York 12223

Richard A. Solomon
Dennis Lane
Wilner & Scheiner
1200 New Hampshire Avenue, N.W.
Suite 300
Washington, D.C. 20036

3. Correspondence and pleadings relating to the intervention and participation in the proceeding by North Carolina should be addressed to:

R.J. Nery
Director, Natural Gas Division,
Public Staff
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

Morton L. Simons
Simons & Simons
1629 K Street, N.W.
Washington, D.C. 20006

4. The instant filing involves a PGA tracking filing proposed to be effective on March 1, 1981, which according to Transco involves a net increase of 66.6 cents per dekatherm (dt) in the commodity or delivery charge of Transco's CD, G, OG, E, PS and S-2 rates, of 66.3 cents per dt in the commodity charge of the ACQ rate schedule, and 1.2 cents per dt in the delivery charge of its X-20 rate schedule.

Of the 66.6 cents increase, 65.4 cents is the result of producer price increases, with 62.3 cents representing an increase in the current purchased gas costs since the previous filing became effective on September 1, 1980 and 3.1 cents per dt reflecting an increase in the Deferred Adjustment. While the absolute level of this increase (which compares with the latest semi-annual increases for Tennessee Gas Pipeline and Texas Eastern Transmission Corp., two pipelines serving a number of the same customers as Transco, of 22.85 cents per Mcf and 17.25 cents per Mcf) would alone be sufficient in protestants' view to justify a hearing, our problems go well beyond this circumstance.

5. Thus the adjusted base cost of gas on the Transco system has risen in the last two-and-one half years from 82.5 cents per dt as of September 1, 1978, to $2.697 per dt as of March 1, 1981, an increase of $1.872 or 227%. This contrasts with an increase in gas costs during the same period for Tennessee of $1.09 or 119% and for Texas Eastern of 89 cents or 103%. Even more important, the latest increase brings the 100% load factor price for contract demand service and the charge under the General Service rate from Transco to $3.7614 for Zone 1, $3.7764 for Zone 2 and $3.8294 for Zone 3. These prices are at a level which, when distribution costs are added into the picture,[1] bring the burner tip price of Transco gas to levels which are rapidly approaching a price at which customers with alternate fuel capacity will switch to oil.[2] Thus as of

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[1] Present markups for the three downstate New York customers of Transco for residential sales are Brooklyn Union, $2.22-2.41; Consolidated Edison, $2.59; and LILCO, $2.17.

[2] The Transco rates proposed to be effective as of March 1, 1981, include increases in its rates filed in Docket No. RP80-117, which are in effect, subject to refund, pending the outcome of that proceeding and also reflect a stay of the cost allocation issue litigated in Docket No. RP76-136, approved by the Court in *Public Service*

September 10, 1981, the price for No. 2 oil in New York City was 99.82 cents per gallon, equivalent to $7.13 per dt, and for low sulphur No. 6 residual oil, 78.8 cents per gallon, equivalent to $5.36 per dt.[3] Similarly, the current prices for No. 6 high sulphur oil in North Carolina, where it is the principal alternate fuel, is approximately 80.55 cents per barrel at the Port of Wilmington, equating to a burner tip price of about $5.41 per dt. Moreover, even if the instant filing would not result in any substantial loss of sales to alternate fuels, it is apparent that the continued ability of Transco's customers to maintain sales to industrial and other end users with alternate fuel capacity will be seriously jeopardized if Transco's purchased gas costs, which have escalated at a steadily increasing level over the last six PGA filings from 21.5 cents for the period between September 1, 1978 and March 1, 1979 to over 59 cents in the most recent six-month period, continues to follow this pattern.

6. The problems raised by Transco's filing are by no means limited to the possibility of loss of sales where the end users have the ability to utilize alternate fuels. For the Transco filing indicates the possibility that unnecessarily high costs for gas are being imposed upon Transco's customers as a result of its gas purchasing practices over

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Commission v. *FERC*, Case No. 79-2182 (D.C. Cir.) It is thus probable that some or all of the rates will eventually be reduced from the levels indicated in Transco's filing in this docket. But gas consumers with alternate fuel capability will frequently shift to oil whenever the effective gas rate exceeds the cost of the oil they can utilize without regard to potential refunds should the gas rates subsequently be held to be invalid.

[3] These rates had risen substantially as of February 4, 1981, in reflection of the OPEC actions and the elimination of all of United States price controls on oil, coupled with weather related increases in demand.

which this Commission retains supervisory control. A substantial portion of the increases which have led to the more than tripling of Transco's purchased gas costs in the last two-and-one-half years is of course due to the statutory increases in the NGPA ceiling rates. But an increasing factor in the ever accelerating increases in Transco's PGA filings has been the impact of increased purchases of very high cost Section 107 gas.

7. Thus, in the last two Transco PGA filings the number of Section 107 sales has increased from 76 accounting for 4.87% of the volumes and 11.32% of the total purchased gas costs with an average price of $5.13 per dt, to 93 sale accounting for 10.81% of the volumes and 22.87% of the total purchased gas costs at an average cost of $5.88. Moreover, Transco in its latest filing, lists 59 contracts, responsible for one-sixth of all of its purchased gas costs (16.27%) with current prices of from $6-$7. These include two sales by Transco's production affiliate, Transco Exploration Company, at rates of $6.93 and $6.68, respectively, the latter of which involved six month volumes of almost 9 million Mcf. There are also included, for the first time, a number of purchases made in 1980 contracts at prices in excess of $7.00, including one purchase from the McCormick 1975 Oil and Gas Fund at a presently effective rate of $7.8114.

8. Recognizing the limitations on the Commission review of such purchases imposed by Section 601 of the NGPA, it is clear that Transco has not demonstrated that its gas purchase patterns, and particularly the Section 107 gas acquired at rates in the $5-$8 per dt range, meet the standards for automatic pass through established by Section 601(c)(2) of the Act. Moreover, with respect to the purchases by Transco from Transco Exploration (or from any other affiliated producer) there has been no showing by Transco that they meet the preliminary test of Section 601 (b)(1)(E) of the NGPA for determining whether they are eligible for pass through under 601(c)(2) in the ab-

sence of "fraud, abuse, or similar grounds". Thus, in the case of the sale by Transco Exploration to Transco from South Timbalier Block 148, the listed price of $6.93 is significantly higher than Transco is paying to unaffiliated producers for gas from the same block. Nor is there anything in the Transco filing from which the Commission can determine the extent to which there have been prepayments with respect to any of Transco purchases of a sort which might involve violation of any NGPA ceiling or to whether Transco's patterns of takes, as a result of unduly restrictive take-or-pay obligations or otherwise, have resulted in additional increases in the overall Transco gas costs.

9. We are convinced for the foregoing reasons that the Commission cannot find that the present filing meets the standards of either the Natural Gas Act or the NGPA, and the Commission accordingly must set the filing for hearing, suspend the effectiveness of the tariff for at least one day, and make any future collections of the increased rates subject to refund. However, the present filing clearly only reflects the tip of the cost increase iceburg Transco is obligated to reveal to collect increased rates commencing in March, 1981; no disclosure is made of the prices and estimated volumes of additional high cost gas Transco has already contracted for, or the probable effect thereof on its rates and the marketability of the gas when such sales become fully operative. Nor are New York and North Carolina aware of any Transco policy in contracting for new gas supplies which has the objective or effect of ensuring that the overall cost of its gas will be maintained at reasonable levels in relation to that of other pipelines or will remain marketable. Thus, it is our understanding that some pipelines, in purchasing high priced or deregulated gas, have insisted upon contract provisions which would permit renegotiation where the price for the sale escalates to a level which jeopardizes continued pipeline sales or is in excess of the delivered price of some specified grade of oil or

other alternate fuel in the pipeline's market area. Whether Transco has incorporated such protective clauses into its higher cost gas purchases has not been disclosed. Nor to the extent that an investigation may indicate that Transco has habitually agreed to more onerous take-or-pay provisions than its major pipeline competitors, has the necessity for such a practice been determined. Recognizing that Transco in the recent past has been in deeper curtailment than many of the other major pipelines, it does not follow that the necessary or appropriate solution to the problem is a contractual pattern which could lead to prices for Transco gas which, even on a rolled-in basis, will result in price-determined "curtailment" of service by its customers.

10. These circumstances convince New York and North Carolina that the Commission, in addition to setting the instant rate filing for hearing pursuant to Section 4 of the Natural Gas Act, should enter into an investigation of Transco's gas purchase practices and policies pursuant to its authority under Section 14 of the Natural Gas Act. Only through such an investigation can the Commission keep itself and the Congress informed as to long range issues regarding Transco's continuing viability as a pipeline able to provide gas to its customers at prices which will permit the gas to be marketed in the event alternate fuel prices fail to keep pace with Transco's indicated rate spiral. While some of the problems to which such an investigation would be directed are not unique to Transco, the abnormally large price increases it has reported in the last several years suggest that an investigation of its operations would be more productive than any such effort conducted on an industry-wide basis.

Accordingly, New York and North Carolina request that their intervention in this proceeding be noted and ask the Commission (1) to suspend Transco's PGA filing for one day, set it for hearing and require that any collection of

the increased rates pending Commission decision be made subject to refund with interest, and (2) enter into an investigation of Transco's gas purchase practices pursuant to Section 14 of the Natural Gas Act.

Respectfully submitted,

/s/ Richard A. Solomon
Richard A. Solomon
Wilner & Scheiner
1200 New Hampshire Avenue, N.W.
Suite 300
Washington, D.C. 20036

Attorney for the Public Service Commission of the State of New York.

/s/ Morton L. Simons
Morton L. Simons
Simons & Simons
1629 K Street, N.W.
Washington, D.C. 20006

Attorney for the North Carolina Utilities Commission.

February 18, 1981

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PIPELINE RATES: SUSPENSION

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes.

Docket No. TA81-1-29-002
(PGA81-1, IPR81-1,
DCA81-1 and LFUT81-1)

TRANSCONTINENTAL GAS
PIPELINE CORPORATION

ORDER ACCEPTING FOR FILING, SUBJECT TO CONDITIONS, AND SUSPENDING PROPOSED TARIFF SHEETS, AND ESTABLISHING PROCEDURES

(Issued February 28, 1981)

On January 29, 1981, Transcontinental Gas Pipeline Corporation (Transco) filed revised tariff sheets [1] to reflect a purchase gas adjustment (PGA) increase of approximately $273.6 million on a semi-annual basis. Such filing reflects (1) a 62.3 cents per dth increase in the commodity charge of Rate Schedules CO, G, OG, E, PS, S-2 and ACQ to track increases in the cost of purchased gas ($255,964,981); (2) an increase of 3.1 cents per dth in the deferred surcharge of Rate Schedules CO, G, OG, E, PS, S-2 and ACQ to recoup underrecoveries of $156,663,765. (3) a 0.3 cent

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[1] Twentieth Revised Sheet No. 12, Twentieth Revised Sheet No. 15 and Third Revised Sheet No. 16 to FERC Gas Tariff, Second Revised Bolume No. 1 and Twenty Sixth Revised Sheet Sheet No. 121 to FERC Gas Tariff, Original Volume No. 2.

per dth increase for curtailment related credits in Rate Schedules CO, G, OG, E, PS, S-2 and Z-20 to recover $354,-474 in underrecoveries; and (4) an increase of 0.9 cent per dth in the Louisiana First Use Tax surcharge to recover an estimated balance of $40,059,191. Transco requests an effective date of March 1, 1981.

Public notice of the filing was issued on February 3, 1981, providing for protests or petitions to intervene to be filed on or before February 18, 1981. Petitions to intervene were filed by those petitioners listed in Appendix A. Having demonstrated an interest in this proceeding warranting their participation, they shall be granted intervention. In addition, a joint notice of intervention was filed by the Public Service Commission for the State of New York and the North Carolina Utilities Commission (the State Commissions).

The State Commissions in their joint notice of intervention protest Transco's filing and request that it be suspended and set for hearing. Specifically, they allege that the Commission cannot find that the increased rates which would be made effective by the instant PGA filing are just and reasonable within the meaning of Sections 4 and 5 of the Natural Gas Act and Section 601(b) of the Natural Gas Policy Act (NGPA), and, therefore, such rates are not appropriate for guaranteed recovery under Section 601(c)(2) of the NGPA. The State Commissions state that the increase in Transco's purchased gas costs have been much more rapid than that of comparable pipelines and that Transco's rates may soon price certain of Transco's distributor customers out of the industrial sales market.[2] They argue that certain purchases by Transco from its producer affiliate may not meet the "affiliated entities" test of Section 601(b)(1)(E) of the Natural Gas Policy Act (NGPA)

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[2] This is because Transco's rates will soon surpass the price of alternative fuels in certain markets.

and further that prices paid for 107 gas from non-affiliated producers may not meet the requirements of Section 601(b) and 601(c)(2) of the NGPA.

In its deliberations on the State Commissions' request to set for hearing the question of whether Transco should be allowed to passthrough the cost of deregulated gas, the Commission remains uncertain as to the particularities of the State Commissions' allegations

Situations might exist where we could deny passthrough of gas costs in accord with Section 601(b) and (c).[3] We are not able at this stage to say whether the State Commissions' allegations sufficiently define a wrong which would lead the Commission to deny passthrough in accord with Section 601(c). The mere conclusory allegation of a violation without any factual or indicative elements supporting such an allegation would ordinarily not be sufficient to lead the Commission to set the matter for hearing. However, this being a case of first impression, we believe it essential that the legal and factual issues relating to Section 601(c) be resolved at hearing. We therefore in this instance will refer such matters to an Administrative Law Judge for initial consideration.

More specifically, the Commission does not perceive that Section 601(c) provides for an examination of prudence, as would be the case under conventional Natural Gas Act rate proceedings, based upon Transco's purchasing the subject gas, rather than other types of gas. However, when assertions are presented that Section 107 purchases involve conduct which rise to the level of fraud, abuse, or similar circumstances, we have a duty to evaluate them under the statutory criteria in Section 601(c). Abuse, in this context,

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[3] The identity of, or differences between, "fraud", "abuse" or "similar grounds", when stated disjunctively in Section 601(c) is a particularly difficult but important question.

does not refer to imprudence but to serious improprieties. The State Commissions' allegations suggest improper behavior which may rise to that level, and that is the question we are setting for the judge's consideration. Allegations of fraud and similar behavior are serious matters and the Commission will pursue such matters to the appropriate extent. However, it is important to emphasize that Section 601 establishes a guarantee of cost passthrough for Section 107 gas absent a finding of fraud, abuse or similar grounds, and protestants have a heavy burden of proof to demonstrate the impropriety that would trigger the "fraud, abuse or similar grounds" basis for denying passthrough of costs.

Based upon a review of Transco's filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Transco's filing and suspend its effectiveness so that it shall become effective March 1, 1981, subject to conditions described below, subject to refund, and subject to the proceedings dscribed below.

In a number of suspension orders,[4] the Commission has addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of the other statutory standards. It has been acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.

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[4] *E.g., Valley Gas Transmission, Inc.*, Docket No. RP80-98 (August 22, 1980) (one day suspension); *Great Lakes Gas Transmission Company*, Docket No. RP80-134 (September 24, 1980) (five month suspension).

Such circumstances have been presented here. A rate change filed pursuant to Commission authorized tracking authority is the type of circumstance which justifies a shortened suspension period. Accordingly, we believe we should exercise our discretion to suspend the rate, but permit the rate to take effect March 1, 1981, subject to refund, and subject to the condition set forth below.

Transco's PGA increase reflects purchases from a producer-affiliate, Transco Exploration Co., in the South Timberline Block 148, Offshore Louisiana, of deregulated high-cost NGPA Section 107 gas priced at $6.8098 per dth. The Commission is unable to determine from the information submitted by the pipeline whether the proposed purchase price assigned to its affiliated production satisfies the affiliated entities limitation set forth in Section 601(b)(1)(E) of the Natural Gas Policy Act (NGPA). That Section provides that in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid shall be deemed just and reasonable if in addition to not exceeding the applicable maximum lawful price ceiling, such amount does not exceed the amount paid in comparable first sale transactions between persons not affiliated with such pipeline. Accordingly, the Commission's acceptance of this increase is conditioned upon Transco's filing, within thirty days of issuance of this order, data responsive to the data request attached in Appendix B. In essence, the data request seeks information demonstrating that the price paid for such production meets the affiliated entities test. This shall also be an issue in the evidentiary proceeding hereinafter ordered.

In addition, Transco's general, system-wide rate increase is subject to proceedings in Docket No. RP80-117. In such proceeding, one issue raised is whether Transco's current accounting methodology concerning the gas cost associated with storage service results in an overcollection of purchased gas costs. Accordingly, the determination of that

issue in the present PGA filing shall be made subject to the outcome of that issue in Docket No. RP80-117.

Furthermore, the Commission notes that Transco's filing also includes increases pursuant to area rate clauses in its contracts with producers. The Commission's acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. Should it ultimately be determined—in accordance with the procedures prescribed in Order No. 23, as amended by subsequent orders in Docket No. RM79-22—that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to Transco shall be flowed through to the ratepayers in accordance with the procedures prescribed in Transco's PGA clause.

In addition, the Commission notes that Transco's deferred purchased gas cost account (Account No. 191) reflects $10.7 million in unpaid accruals. Transco indicated these unpaid accruals are attributable to purchases from producers who have NGPA well category determination filings pending for higher rates. Transco has included an estimated effect of the higher rates for these purchases. Such inclusion of unpaid accruals in the deferred account is inconsistent with the Commission's Regulations governing purchase gas costs. Accordingly, Transco is directed to remove unpaid accruals from its deferred Account No. 191 and to file within 30 days revised tariff sheets, to be effective March 1, 1981, eliminating such costs from the pipeline's deferred account.

The Commission Orders:

(A) Pursuant to the authority of Section 601 of the Natural Gas Policy Act and the Natural Gas Act, particularly sections 4, 5, 7, 8 and 15 thereof, and the Commission's Regulations, a public hearing shall be held concerning the lawfulness of the rates proposed by Transco in such PGA filing.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 C.F.R. 3.5(d)), shall convene a pre-hearing conference in this proceeding to be held within 30 days after the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

(C) Subject to the conditions set forth in the body of this order and the ordering paragraphs below. Transco's proposed tariff sheets are accepted for filing and, suspended, subject to refund, to become effective March 1, 1981.

(D) The issue in this docket of whether such PGA filing contains any overcollections due to Transco's current storage pricing methodology is made subject to the outcome of that issue in Docket No. RP80-117.

(E) Transco is ordered to file on or before 30 days after the issuance of this order revised tariff sheets to become effective March 1, 1981, reflecting the removal of $10.7 million in unpaid accruals from Account No. 191.

(F) Transco shall file data as set forth in Appendix B within thirty days of the issuance of this order to show that the pricing of affiliate-owned production is in accordance with Section 601(b)(1)(E) of the NGPA.

(G) The costs associated with Transco's affiliate-owned production shall be collected subject to refund and subject to: (1) Transco's filing within thirty days of the issuance of this order the data called for in Paragraph (F) above, and (2) review of such data by the Commission to determine what further action is appropriate.

(H) The petitioners listed in Appendix A to this order are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *provided, however,* that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petition to intervene and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding. However, the Commission denies New York's and North Carolina's request for an investigatory hearing.

By the Commission.

(SEAL)

/s/ KENNETH F. PLUMB
Kenneth F. Plumb,
Secretary.

APPENDIX A

Transcontinental Gas Pipeline Corporation

Docket No. TA81-1-29-002

Petitioners for Intervention

Elizabethtown Gas Company

South Jersey Gas Company

Eastern Shore Natural Gas Company

Philadelphia Gas Works

Pennsylvania Gas and Water Company

Piedmont Natural Gas Company, Inc.

Frederick Gas Company, Inc.

APPENDIX B

In order to make a determination regarding whether or not Transco's affiliated purchases of Section 207 gas meets the affiliated entities test additional information is required. Please submit the following information:

(1) Please identify other sources of gas priced pursuant to Section 107 of the NGPA on Transco's system or purchased by Transco as of March 1, 1981. Further, please provide:

(a) contracts between Transco and the suppliers of such gas;

(b) the geographic origin of such supplies including file and A.P.I. well number;

(c) indicate if any of the Section 107 wells are jointly owned. If so, provide the names of the other sellers and, if applicable, other buyers;

(d) the price and purchase volumes of such gas;

(e) the pricing mechanism for such gas if no contract applies;

(f) indicate if the contract has in it, or has determined, a maximum ceiling price for such gas. Provide details.

(2) Please state whether Transco has negotiated or is negotiating for other supplies of gas priced pursuant to Section 107 of the NGPA. If so, please include the following information for the period as of March 1, 1980.

(a) indicate the seller of such gas;

(b) identify the geographic origin of such supplies including field and well number;

(c) state the price requested by the seller and the price offered by Transco. Include the volume of gas in-

volved and the time period of negotiations for each parcel of gas; and

(d) if such gas was not purchased explain why these supplies were not contracted for by Transco.

(3) Please identify any other producers of Section 107 gas who produce gas either from the same filed Transco purchases or produces its Section 107 gas or adjacent fields thereto and the prices paid for such purchases.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PIPELINE RATES: SUSPENSION, CONSOLIDATION

Before Commissioners: C. M. Butler III, Chairman; Georgiana Sheldon, Matthew Holden, Jr., and J. David Hughes.

Docket Nos. TA81-2-29-001 (PGA81-2, IPR81-2, DCA81-2), TA81-1-29 (PGA81-1), RP80-117 and TA81-1-29-002

TRANSCONTINENTAL GAS PIPELINE CORPORATION

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED TARIFF SHEETS SUBJECT TO REFUND AND CONDITIONS AND CONSOLIDATING PROCEEDINGS

(Issued August 31, 1981

On July 31, 1981, Transcontinental Gas Pipeline Corporation (Transco) filed tariff sheets [1] reflecting a decrease of approximately $169 million to track a decrease of 38.5 cents per dth in the commodity charge of Rate Schedules CD, G, OG, E, PS and S-2, a decrease of 39.6 cents per dth under the ASQ schedule and an increase of 1.1 cents per dth in the delivery charge of Rate Schedule X-20. Transco requests an effective date of September 1, 1981.

This filing reflects the following adjustments: (1) an 8.9 cents per dth increase in the commodity charge of Rate Schedules CD, G, OG, E, PS, S-2 and ACQ to track in-

[1] Twenty-Second Revised Sheet Nos. 12 and 15 and Fourth Revised Sheet No. 16 to Second Revised Volume No. 1 and Twenty-Eighth Revised Sheet No. 121 to Original Volume No. 2.

creases in the cost of purchased gas ($39,139,292); (2) a decrease of 48.5 cents per dth (from 34.5 cents to negative 14.0 cents) in the deferred surcharge of Rate Schedules CD, G, OG, E, PS, S-2 and ACQ to return overrecoveries of $61,618,142 in the deferred account; and (3) an increase of 1.1 cents per dth for curtailment related credits in Rate Schedules CD, G, OG, E, PS, S-2 and X-20.

Public notice of the filing was issued on July 31, 1981, providing for protests or petitions to intervene to be filed on or before August 19, 1981. Petitions to intervene were filed by the Elizabethtown Gas Company, Atlanta Gas Light Company, Washington Gas Light Company and Frederick Gas Company, Inc., Process Gas Consumers Group, Public Service Electric and Gas Company, Piedmont Natural Gas Company, Inc., and Philadelphia Gas Works. Also notices of intervention were filed by the Public Service Commission of New York (New York) and the North Carolina Utilities Commission (North Carolina). Having demonstrated an interest warranting their participation, intervention is granted.

In addition to noticing its intervention, New York filed a protest and request for a hearing, North Carolina joined in New York's protest and also requested that the Commission consolidate any hearing with the ongoing investigation of Transco's previous PGA filing.[2] Specifically, New York requests a hearing on the issues of whether the prices paid by Transco for Section 107 deregulated gas to

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[2] Transco's previously filed PGA rate increase in Docket No. TA81-1-29 (PG81-1), effective March 1, 1981, was accepted for filing and suspended by Commission order issued February 28, 1981, for further investigation into Transco's gas purchase practices and policies. Specifically, this proceeding is examining the issue of whether Transco's gas purchase prices are excessive due to "fraud, abuse or similar grounds" under Section 601(c)(2) of the NGPA.

nonaffiliated producers are excessive due to fraud, abuse or similar grounds and whether the prices paid to affiliated producers for Section 107 gas exceed the prices paid in comparable transactions by non-affiliated parties.[3] Since these issues are currently under investigation in Transco's prior PGA filing, and in view of the significant increases cited by New York of prices paid by Transco for Section 107 gas, the Commission concludes that Transco's pending PGA rate increase investigation is a more appropriate forum to address the potential issues raised in the instant filing. Consequently, the instant filing shall be consolidated with the proceedings in Docket No. TA81-1-29 for purposes of hearing and decision.

Also, New York alleges that while the instant filing involves a decrease of 39.6 cents per dt in the commodity charges, this decrease is the result of a gross underestimate by Transco of the amount of gas it would sell in the six month period March 1 through August 31, 1981, which has resulted in an overcollection of $61,618,142 or approximately 48.5 cents per Mcf. New York states that in such situations where the rates which become effective were almost 50 cents in excess of what they should have been, retail customers with alternative fuel capability will receive the wrong market signals as to the potential cost of gas and may switch to alternative fuels rather than depending on possible refunds from Transco.

The Commission finds that there is insufficient information contained in the filing as to show why Transco overestimated its PGA rates. Accordingly, the Commission will defer any action on this issue pending receipt from Transco of an answer to New York's petition setting out in detail its reasons for the resulting overestimate.

Based upon a review of Transco's filing, the Commission finds that the proposed tariff changes have not been shown

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[3] *See:* Section 601(b)(1)(E) of the NGPA.

to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept the revisions to the tariff sheet for filing and suspend their effectiveness, subject to refund and conditions, as indicated below.

In a number of suspensions orders,[4] the Commission has addressed the considerations underlying its policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may run afoul of the other statutory standards. It has been acknowledged. however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. Since this filing is not intended to increase revenues, the Commission shall suspend the effectiveness of the proposed tariff sheets such that they shall become effective on September 1, 1981, subject to refund and subject to modification in the consolidated proceedings established by this order.

Further, the Commission in its investigation of Transco's general rate increase in Docket No. RP80-117 found that Transco's current method of pricing of injections and withdrawals from storage service may result in a double recovery of a portion of the storage gas costs. Accordingly, the instant filing shall be suspended and made subject to refund pending the final disposition of the proceedings in Docket No. RP80-117.

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[4] *E.g., Valley Gas Transmission, Inc.*, Docket No. RP80-98 (August 22, 1980) (one day suspension); *Great Lakes Gas Transmission Company*, Docket No. RP81-134 (September 24, 1980) (five month suspension).

Transco's instant filing fails to provide the carrying charge calculations on their deferred account balances (Account No. 191) shown in their deferred surcharge calculations. Accordingly, the Commission's acceptance of Transco's filing shall be conditioned on Transco supplying those calculations.

Transco's filing includes increases pursuant to area rate clauses in its contracts with producers. The Commission's acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. Should it ultimately be determined in accordance with the procedures prescribed in Order No. 23, as amended by subsequent orders in Docket No. RM79-22,[5] that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to Transco shall be flowed through to the ratepayers in accordance with the procedures prescribed in Transco's PGA clause.

The Commission orders:

(A) Subject to the conditions set forth in the body of this order and in the ordering paragraphs below, Transco's Twenty-Second Revised Sheet Nos. 12 and 15 and Fourth Revised Sheet No. 16 to Second Revised Volume No. 1 and Twenty-Eighth Revised Sheet No. 121 to Original Volume No. 2 are accepted for filing and suspended, and waiver of notice requirements is granted so that they may go into effect September 1, 1981, subject to refund.

(B) Pursuant to the authority of Section 601 of the Natural Gas Policy Act, the Natural Gas Act, particularly sections 4, 5, 7, 8 and 15 thereof, and the Commission's Regulations, a public hearing shall be held concerning the issue of the Section 107 purchased gas costs.

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[5] These orders were recently affirmed in *Pennzoil Company v. Federal Energy Regulatory Commission*, —— F.2d ——, Nos. 79-1247, 79-1602 (5th Cir., May 20, 1981).

(C) Transco's revised tariff sheets are made subject to the final disposition of the storage pricing issue in the proceedings in Docket No. RP80-117.

(D) The hearing into the "fraud, abuse or similar grounds" question in this docket is consolidated with the pending investigation in Docket No. TA81-1-29 (PGA81-1).

(E) Transco shall within 15 days, file with the Commission Account No. 191 carrying charge calculations on the balances in Account No. 191 reflected in the rates in this filing.

(F) The petitioners identified in the body of this order are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; provided, however, that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene; and provided, further, that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

By the Commission.

(SEAL)

/s/ KENNETH F. PLUMB
Kenneth F. Plumb,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PIPELINE RATES : SUSPENSION; PGA

Before Commissioners: C. M. Butler III, Chairman; Georgiana Sheldon and J. David Hughes.

Docket No. TA82-1-20-000
(PGA82-1) (IPR82-1)
(DCA82-1)

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED TARIFF SHEETS, SUBJECT TO REFUND AND TO CONDITIONS

(Issued February 26, 1982)

On January 29, 1982, Transcontinental Gas Pipe Line Corporation (Transco) filed a purchased gas cost adjustment (PGA) rate increase proposed to become effective March 1, 1982.[1] Transco's filing reflects an increase of approximately $92.6 million, and proposes the following adjustments: (1) a 27.20 cents per dth increase in the commodity charge of Rate Schedules CD, G, OG, E, PS, S-2, and ACQ; (2) a decrease of 4.30 cents per dth in the deferred surcharge of Rate Schedules CD, G, OG, E, PS, S-2, and ACQ to return overrecoveries of $81,364,003; and (3) an increase of 2.1 cents per dth for curtailment-related credits in Rate Schedules CD, G, OG, E, PS, S-2, and X-20.

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[1] Third Revised Twenty-Second Revised Sheet Nos. 12 and 15, Fifth Revised Sheet No. 16 to FERC Gas Tariff, Second Revised Volume No. 1, and Second Revised Twenty-Eighth Revised Sheet No. 121 to FERC Gas Tariff, Original Volume No. 2.

Public notice of Transco's filing was issued on February 5, 1982, providing for comments, protests, or petitions to intervene to be filed by February 19, 1982. Timely petitions to intervene have been filed by the petitioners listed in Appendix A. Having demonstrated an interest in this proceeding warranting their participation, each of these petitioners shall be granted intervention. In addition, a Notice of Intervention, Protest and Complaint and Request for Suspension and Hearing was filed by the Public Service Commission of the State of New York (New York), and a Notice of Intervention was filed by the North Carolina Utilities Commission.

On February 22, 1982, an untimely petition to intervene was filed by the Piedmont Natural Gas Company, Inc. (Piedmont), setting forth no grounds for the late filing of the petition. For lack of good cause shown for the late filed petition, Piedmont's petition to intervene is denied pursuant to Section 1.8(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.18(d) (1981).

Based upon a review of Transco's filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept Transco's filing and suspend the effectiveness so that it shall become effective on March 1, 1982, subject to refund and subject to the conditions described below.

In a number of suspension orders,[2] the Commission has addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given

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[2] *E.g., Valley Gas Transmission, Inc.*, Docket No. RP80-98 (August 22, 1980) (one day suspension); *Great Lakes Gas Transmission Company*, Docket No. RP80-134 (September 24, 1980) (five month suspension).

there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable or that it may be inconsistent with other statutory standards. It has been acknowledged, however, that shorter suspensions may be warranted in cicumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances exist here. A rate change filed pursuant to Commission authorized tracking authority is the type of circumstance which justifies a shortened suspension period. Accordingly, we believe we should exercise our discretion to suspend the rate, but permit the rate to take effect March 1, 1982, subject to refund, and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

Transco's filing reflects in the deferred account balance costs associated with injections into and withdrawals from its storage facilities. The inclusion of these costs may result in a double recovery of a portion of the charge for storage gas because of Transco's method of pricing these injections and withdrawals. The Commission is unable to determine from the information given in the filing, however, whether such a double recovery does in fact occur. We are therefore suspending Transco's filing, making it effective March 1, 1982, subject to refund, and to Transco's filing additional information supporting the storage costs contained in the filing.

In its protest, New York states, among other things, that the present filing and two of Transco's earlier suspended PGA filings contain related issues. Specifically, New York states that Transco's present filing contains a number of purchases of gas deregulated under Section 107 of the Natural Gas Policy Act which are well in excess of market clearing prices. Further, New York observes that the Co-

mission has suspended and set for hearing Transco's earlier filings in Docket Nos. TA81-1-29 and TA81-2-29 to consider whether any of the costs associated with Transco's gas purchases should be denied pass-through because of fraud, abuse, or similar grounds under Section 601(c)(2) of the NGPA. New York requests the Commission to suspend the present filing, subject to refund, and to set it for hearing on the issue of the lawfulness of Transco's rates under Section 601(c)(2) of the NGPA, but states that it is not at this time requesting consolidation of this proceeding with the consolidated proceedings pending on this issue in Docket Nos. TA81-1-29 and TA81-2-29. Instead, New York suggests that the Commission should designate the Presiding Judge in Docket Nos. TA81-1-29 and TA81-2-29 to preside over the proceeding on the present filing, and authorize the Judge to determine how this proceeding should be coordinated with the proceedings in the two earlier dockets. Since some of the costs associated with Transco's gas purchases in the present filing are currently under investigation in Docket Nos. TA81-1-29 and TA81-2-29, we find that it is appropriate in this case to accept Transco's filing and to suspend it, placing it into effect subject to refund and subject to the final disposition of the proceedings in Docket Nos. TA81-1-29 and TA81-2-29.

Furthermore, Transco's filing does not contain sufficient information to determine whether separate subaccounts are maintained in Account No. 191, as required under Part 201 of the Commission's regulations concerning the Uniform System of Accounts, 18 C.F.R. § 201.191(D) (1981). Because of this lack of information, the Commission is unable to determine the appropriateness of the amounts reflected in this account at this time. Transco has filed additional information on this issue. Acceptance of Transco's filing is therefore conditioned upon further Commission review of the additional information concerning the methodology it

uses to compute its Account 191 balance for the surchange adjustment.

Finally, we note that Transco's filing also includes increases pursuant to area rate clauses in its contracts with producers. The Commission's acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. Should it ultimately be determined, in accordance with the procedures prescribed in Order No. 23, as amended by subsequent orders prescribed in Docket No. RM79-22,[3] that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to Transco shall be flowed through to the ratepayers in accordance with the procedures prescribed in Transco's PGA clause.

The Commission Orders:

(A) Transcontinental Gas Pipe Line Corporation's Third Revised Twenty-Second Revised Sheet Nos. 12 and 15, and Fifth Revised Sheet No. 16 to FERC Gas Tariff, Second Revised Volume No. 1; and Second Revised Twenty-Eighth Revised Sheet No. 121 to FERC Gas Tariff Original Volume No. 2 are accepted for filing and suspended, so that the filing shall become effective March 1, 1982, subject to refund and subject to the conditions set forth in the body of this order and in the paragraphs below.

(B) The issue of whether any of the costs of gas purchased by Transco should be denied pass-through because of fraud, abuse, or similar grounds pursuant to Section 601(c)(2) of the NGPA shall be subject to the final disposition of the proceedings in Docket Nos. TA81-1-29 and TA81-2-29.

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[3] These orders were recently affirmed in *Pennzoil Company* v. *Federal Energy Regulatory Commission*, 645 F.2d 360 (5th Cir. 1981).

(C) Transco shall file within 15 days of the issuance of this order additional information supporting the storage costs contained in its filing.

(D) Acceptance is conditioned upon further Commission review of the additional information concerning the methodology Transco uses to compute its Account 191 balance for the surcharge adjustment.

(E) The petitioners listed in Appendix A to this order are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; provided, however, that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene and provided, further, that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

By the Commission.

(SEAL)

/s/ KENNETH F. PLUMB
Kenneth F. Plumb,
Secretary.

APPENDIX A

Notices of Intervention:

North Carolina Utilities Commission

Public Service Commission of the State of New York

Petitions to Intervene:

Atlanta Gas Light Company

Brooklyn Union Gas Company

Columbia Gas Transmission Corporation

Consolidated Edison Company of New York, Inc.

Consolidated Gas Supply Corporation

Eastern Shore Natural Gas Company

Elizabethtown Gas Company

Frederick Gas Company, Inc.

Long Island Lighting Company

National Fuel Gas Supply Corporation

North Carolina Natural Gas Corporation

Philadelphia Gas Works

Process Gas Consumers Group

Public Service Company of North Carolina, Inc.

Public Service Electric and Gas Company

South Jersey Gas Company

Texaco Inc.

Transcontinental Gas Pipe Line Corporation

Virginia Electric and Power Company

Washington Gas Light Company

[Piedmont Natural Gas Company, Inc.]

[429] Q. (Mr. Stewart) In connection with these proceedings, has Transco entered into an agreement with the protestors with regard to the purchasing and the prices to be paid for any high cost gas that will be contracted for in the future? A. Not only with respect to high cost gas, but with respect to any gas that we purchase.

BY CHAIRMAN FANCHER:

Entered into a contract with whom, Mr. Stewart?

BY MR. STEWART:

A memorandum of understanding with regard to the protestors in the FERC hearing.

Q. (Mr. Stewart) What was that understanding? A. The understanding, obviously, speaks for itself, but in essence it states that Transco will not enter into any new contract unless the Commission is advised prior to that as to the reason why in excess of $5.00 There is also certain understandings with respect to whether contracts will contain market outs; whether they will contain take or pay provisions on the basis of reserves, not on deliverability. And with respect to meetings with those state commissions concerning Transco's purchase policy and market demand, long term supply demand, and any significant changes contemplated in our gas purchase policies. Also, with respect to the PGA, advance notices to the impact under the PGAs that will have a resale rates of Transco to its distributors.

[430] BY MR. STEWART:

Mr. Chairman, I would like to offer as Exhibit 2 to his testimony a copy of that memorandum.

BY MR. FRANKS:

We object to that, Mr. Chairman, completely. I don't think it should even be allowed to be proffered—a memo-

randum agreement somebody has with somebody else in North Carolina.

BY CHAIRMAN FANCHER:

I don't think it is material, Mr. Franks. I sustain the objection, but we will let him mark it for identification and make it a part of the record.

(THE MEMORANDUM WAS MARKED AS EXHIBIT 2 TO THE TESTIMONY OF MR. MULLENDORE FOR PURPOSES OF THE RECORD ONLY, AND APPEARS AS FOLLOWS:)

Exhibit 2

Docket Nos. TA81-1-29
TA81-2-29
TA82-1-29

TRANSCONTINENTAL GAS PIPE LINE CORPORATION

MEMORANDUM OF UNDERSTANDING

In order to achieve final resolution of the outstanding issues in the above-captioned proceedings, Transcontinental Gas Pipe Line Corporation (Transco) and the Public Service Commission of the State of New York and the North Carolina Utilities Commission (State Commissions) hereby agree to the provisions of this Memorandum of Understanding.

Preamble

During the pendency of these proceedings and reflecting changed conditions in both market demand and gas supply, Transco has adopted certain policies with respect to its purchase of gas under existing supply contracts and its negotiation of new supply contracts. These policies include the following:

a. Transco has exercised the "market-out" provisions of its deregulated gas contracts containing such provisions, at a price of $5.00 per MMBtu.

b. Transco has negotiated a reduction to $5.00 per MMBtu for deregulated gas purchased from its affiliate Transco Exploration Company under contracts not containing "market-out" provisions.

c. Transco has declined to enter into new contracts for uncommitted domestic reserves that do not contain "market-out" provisions at least as favorable to the purchaser as the "market-out" provisions invoked by Transco in May of 1982.

d. Transco has declined to enter into new contracts for uncommitted domestic reserves at an effective price in excess of the "market-out" level, currently computed by Transco at $5.00 per MMBtu.

e. Transco has used its best efforts to enter into new contracts for uncommitted domestic reserves on terms that minimize take obligations, including provisions that would not require take obligations prior to 1984 and provisions that limit annual takes to 15% of original recoverable reserves.

In light of the foregoing, the parties agree as follows:

I. Meetings

Transco shall initiate a meeting with each State Commission, either separately or jointly, on a semi-annual basis; such meetings shall be held, so far as practicable, no later than June 1 and December 1 of each year and shall have as their purpose a discussion of short- and long-term supply and demand, the measures anticipated by Transco to bring the two into balance, any significant changes then contemplated by Transco in its gas purchase policies and such information as is then available concerning its next change in rates under its PGA provision.

II. Advance Notice of PGA Filings

Approximately 15 days before the filing of each change in rates under its PGA provision, or sooner if the data are available, Transco shall furnish to the State Commissions an estimated summary of its next PGA rate filing. The summary shall include the total unit rate change, the projected surcharge to clear Account 191, an explanation of projected sales and total projected gas costs, and a volumetric and average unit cost breakdown of gas purchases by NGPA categories.

III. Notice of Significant Change in Gas Purchase Policies

In the event that Transco determines the need to alter the gas purchase policies specified in the Preamble hereof in a manner that would significantly affect the rates charged by Transco to its customers, it shall notify the State Commissions and its customers which are not affiliated with an interestate pipeline of the nature of and reasons for the change, and shall receive the views of such parties. Such notice (including a reasonable time for the parties to express their views) shall be given prior to the implementation of any change, unless it appears to Transco that delay incident to such advance notice would adversely affect it and the public it serves; in such case, Transco shall promptly notify the State Commissions and its customers which are not affiliated with an interstate pipeline of the change, either contemporaneously therewith or as soon as practicable after implementing such change. Nothing herein is intended to limit Transco's flexibility in implementing gas purchase policies which it believes will serve the best interests of itself and its customers.

IV. Access to New Contracts and Amendments

a. Transco shall provide to each State Commission on a semi-annual basis a summary of each new gas supply contract involving an estimated 5 Bcf or more of dedicated reserves; such summary shall show the date of contract, seller(s), field, estimated reserves, estimated date of initial delivery, applicable NGPA section(s), estimated initial price, existence of market-out provisions, and take-or-pay provisions. Transco shall also make available in its New York and Charlotte offices copies of each such contract for a period of one year for review by representatives of Transco's customers which are not affiliated with an interstate pipeline and the State Commissions.

b. Transco shall provide to each State Commission on a semi-annual basis a summary of each new amendment

relating to price or quantity of an existing gas supply contract which involves an estimated 5 Bcf or more of dedicated reserves. Transco shall also make available in its New York and Charlotte offices for a period of one year copies of each such amendment for review by representatives of Transco's customers which are not affiliated with an interstate pipeline and the State Commissions.

V. Termination of Proceedings, Withdrawal of Protests and Effective Date of Memorandum

Transco's agreement to this Memorandum is contingent upon the Commission terminating the instant proceedings without further hearings. Consequently, upon execution of this Memorandum, the State Commissions agree to withdraw their joint protests herein contingent upon the grant of Transco's motion to terminate these proceedings. This Memorandum shall be effective on the date that the Commission issues its order granting Transco's motion to terminate these proceedings. If such order shall be vacated in whole or in part on appeal, the provisions of this Memorandum shall be voidable at the election of any party hereto.

ACCEPTED AND AGREED TO THIS
25th DAY OF July, 1982
TRANSCONTINENTAL GAS PIPE LINE
CORPORATION

By /s/ THOMAS F. RYAN, JR.
Thomas F. Ryan, Jr.
Its Attorney

ACCEPTED AND AGREED TO THIS
27th DAY OF July, 1982
PUBLIC SERVICE COMMISSION OF THE
STATE OF NEW YORK

By /s/ RICHARD A. SOLOMON
Richard A. Solomon
Its Attorney

ACCEPTED AND AGREED TO THIS
27th DAY OF July, 1982
NORTH CAROLINA UTILITIES
COMMISSION

By /s/ MORTON L. SIMONS
Morton L. Simons
Its Attorney

[435] BY MR. STEWART:

We have no further questions of the witness.

BY CHAIRMAN FANCHER:

Mr. Stewart, those memorandums of agreement are not a part of the record, but just as a matter of curiosity, what are their dates? The one, in particular, where Transco is required to not buy any gas over $5.00 and the market out provisions and all of that stuff you were talking about.

BY MR. TAYLOR:

July 29, 1982, Mr. Chairman, the same date the petition——

BY MR. STEWART:

I would like for my witness to answer that.

BY CHAIRMAN FANCHER:

Well, you can read it.

BY MR. STEWART:

Yes, sir, the document speaks for itself. This is the date that it was signed, and I would like for Mr. Mullendore to clarify it.

BY CHAIRMAN FANCHER:

All right, that will be fine.

BY THE WITNESS:

I'm sorry, I did not understand the question.

BY CHAIRMAN FANCHER:

What was the date of that memorandum of agreement?

BY THE WITNESS:

It was entered into and signed on July 29, 1982, as a [436] result, Mr. Chairman, of a number of discussions

which we had with officials or chairman of the New York Public Service Commission and the North Carolina Utilities Commission, extending from a period of, I would say, late April, early May until this date.

BY CHAIRMAN FANCHER:

You say you have no further questions, Mr. Stewart?

BY MR. STEWART:

Yes, sir, that's right.

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CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Mullendore, I believe yesterday you said you were familiar with the rules and regulations of FERC, is that right? A. That's correct.

Q. And with the Natual Gas Policy Act of 1978? A. Yes.

Q. Will you agree that FERC no longer has jurisdiction over the first sales of Section 107 gas? [437] A. That's correct.

Q. And the wells in question producing from this pool all produce Section 107 gas, do they not? A. I believe they have been certified as such, my recollection, and that certification has been accepted by the FERC.

Q. Yesterday you alluded to an agreement that Transco entered into with certain state commissions, do you recall that testimony? A. Yes, I do.

Q. What were those state commissions? A. The states of North Carolina and New York.

Q. Those commissions do not regulate Transco's resale rates, do they? A. No, they regulate the customers of

Transco, the distribution customers that are selling gas that Transco has sold within those states.

Q. But they do not regulate Transco's rates that it charges, do they? A. No. Exclusive jurisdiction of Transco with respect to its rates and operations, certificate matters with respect to construction, how a pipeline is operated, is in the FERC.

Q. That agreement you entered into on July 29, was not with FERC, was it? A. The staff of the FERC has joined in that. When it [438] was presented to the administrative law judge for certification to the FERC, my recollection is that the staff of the FERC joined in at that point.

Q. It was not required by the FERC, was it? Is there an order which required Transco to enter into the agreement signed on July 29, 1982? A. No, there is no such agreement. That memorandum of understanding grew out by the protest by an investigation—protest by the state commission, and an investigation that was ordered by the FERC into the matters that are contained in the commission's order.

Q. My question to you is that the memorandum of understanding was not required by an order of the Federal Energy Regulatory Commission, was it; yes, or no? A. No; no, it was not.

Q. The agreement was signed by Transco after Coastal Exploration complained to this Board in its letter of July 6, 1982; do you need to look at the file, or will you take that for granted? A. The date—the memorandum of understanding is dated July 29, 1982.

Q. Do you need to refer to the Oil and Gas Board's file to see that in fact that was after the letter of July 6, 1982 that Coastal wrote to the Board complaining about unratable takes? A. I will accept that statement.

[439] Q. And the agreement was signed by Transco the same date the petition in this docket was filed, was it not? A. If the record demonstrates that.

Q. You don't have any argument with that? A. Whatever the record demonstrates.

Q. Has FERC told you not to purchase Coastal Exploration's gas produced from these wells? A. No.

Q. Has FERC told you not to purchase gas or take gas ratably from these wells? A. What do you mean by ratably?

Q. Well, any understanding that you have of ratable take. I'm asking you is there an order from the Federal Energy Regulatory Commission which directs Transco not to take gas ratably from these wells? Is there such an order? A. Well, I don't want to quibble with the term ratable. There is no order of the commission that says we cannot take gas from these wells.

Q. And FERC has not told you not to comply with Rule 48 of this Board, has it? A. There is no order specifically issued from FERC that says not to comply with Rule 48.

Q. FERC has not told Transco that it cannot buy Coastal's share of gas produced from these wells on the same terms and conditions that it buys the operator's gas? [440] A. There is no specific order with respect to that.

Q. As a practical matter and a financial matter, Transco has never believed the challenges which have been made to its rates before FERC will have any significant effect on its financial position of net income; Transco has never believed that, has it? A. Would you repeat that?

Q. As a practical and financial matter, Mr. Mullendore, Transco has never believed that the challenges which have been made before FERC to its jurisdictional resale rates, will have any significant effect on Transco's financial posi-

tion or Transco net income? A. I don't believe I can agree with that.

Q. Are you a stockholder in Transco? A. Yes, sir.

Q. Do y'all publish quarterly financial statements? A. Yes, sir.

Q. Are you familiar with those financial statements? A. Yes, sir.

Q. Would you know it if you saw it? A. I'm sure I would.

Q. Let me hand you this document and ask you if you can identify that. A. Yes, I can.

Q. Do you recognize that to be the financial statements of the Transco companies, including Transcontinental Gas [441] Pipe Line for the first quarter of 1982? A. That's correct.

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[442] Q. (Mr. Taylor) Mr. Mullendore, referring you to what has been marked as Exhibit for identification, will you turn to the 10th page that is entitled Notes to Condense Consolidated Financial Statement? A. Yes, sir, I have that.

BY CHAIRMAN FANCHER:

Mr. Taylor, who made that up? I suppose it's an audit report or something like that.

BY MR. TAYLOR:

Yes, it's a conventional report of Transco.

BY CHAIRMAN FANCHER:

Who did it?

Q. (Mr. Taylor) Mr. Mullendore, can you tell the Board under whose supervision this financial——

BY CHAIRMAN FANCHER:

I don't want to know under whose superivsion; I want to know who did it.

Q. (Mr. Taylor) Mr. Mullendore, who prepared this report for Transco? A. Transco Energy Company filed the report. Normally, it is handled by the financial department of Transco Energy, along with the legal department of Transco Energy.

Q. Transcontinental Gas Pipe Line Corporation is a subsidiary of Transco Energy, is that right? A. That is correct. I assume that Transco's accounting firm, which is Arthur Anderson Company, participated in the [443] financial notes relating to the various items that are contained in the report.

Q. You have seen this report before, haven't you? A. Yes, sir, I have.

Q. Do you believe it to be accurate? A. I have no reason to believe otherwise.

Q. Would you turn to the 10th page, which is marked Notes to Condense the Consolidated Financial Statement, and look in the second column? A. I have that.

Q. I believe that the second full paragraph refers to the Transco Pipe Line three semi-annual purchase gas adjustment filings that have been made with FERC, is that Correct? A. Yes, sir.

Q. And it goes on to refer to the protest, to which you previously testified have been filed by the State of New York and North Carolina, is that correct? A. That is correct.

Q. And that is the protest to your jurisdictional resale rates, correct? A. No, you are incorrect.

Q. All right, correct me. A. They are protests to the—not the resale rates, as such, they are protests to the pur-

chase gas costs that are passed through under the commission's regulations having to do with PGAs.

[444] Q. They would challenge the amount you can pay for your gas? A. They challenged, among other things, that item. I think that the protests probably speak for themselves. There were purchase patterns, there were take or pay, there were many other items of protest.

Q. Are the protests referred to in this paragraph on this page of your first quarterly report the same protests you referred to yesterday in your testimony from Mr. Stewart? A. Yes, sir.

Q. All right. Now, will you turn to the next page and read the first full sentence that appears in the first column?

A. (Reading) "Transco believes that the ultimate resolution of this matter will have no significant effect on its financial position on reported net income."

Q. And what matter is it referring to? A. It is referring to the protest by the New York and North Carolina Utilities Commissions concerning the pipeline company's three annual—semi-annual purchase gas adjustment filings for March and September of 1981 and March of 1982.

Q. And that continues to be Transco's belief? A. Well, it certainly is now that the memorandum of understanding is entered into.

Q. Now, yesterday Mr. Stewart examined you about Transco's sales and finances. In fact, Transco's total gas sales for the second quarter of 1982 are up as opposed to the [445] second quarter of 1981, are they not?

BY MR. STEWART:

Mr. Chairman, let the record reflect that there was no direct examination regarding finances. We will stipulate that we did have testimony concerning sales.

BY CHAIRMAN FANCHER:

I would have to agree with you, Mr. Stewart. Mr. Taylor, I really don't know what this has to do with Rule 48. Does New York produce any gas? Does Transco buy any gas in New York?

BY MR. TAYLOR:

Mr. Chairman, I'm just trying to make my record in response to several matters.

BY CHAIRMAN FANCHER:

Well, we are going to let you make your record, but I would like an answer; does New York produce any gas?

BY MR. TAYLOR:

It was my understanding of the testimony yesterday that the excuse they are offering for violating Rule 48 is this agreement with the states of New York and North Carolina, the——

BY CHAIRMAN FANCHER:

Okay, does North Carolina produce any gas? Do they buy any gas in North Carolina?

BY MR. TAYLOR:

That, I don't know, Mr. Chairman.

BY CHAIRMAN FANCHER:

Well, ask him.

[446] Q. Are you buying any gas in North Carolina? A. No.

Q. Are you buying any gas in New York? A. No. They produce gas. The State of New York produces gas, but we don't buy any.

Q. Well, in fact, the total sales of gas by Transco for the second quarter of 1982 was 236 billion cubic feet, were they not? A. I don't have that figure in mind.

Q. Let me hand you this next document and ask you if you can identify that? A. All right, that is a——

BY MR. STEWART:

Mr. Chairman, we—I'll just make a continuing objection and not waste the Board's time.

BY CHAIRMAN FANCHER:

Okay, let the record show that Mr. Stewart has a continuing objection to all of this line of testimony, but we want the record to be complete, Mr. Taylor, you may proceed. We gave him the same latitude yesterday and Tuesday.

Q. (Mr. Taylor) Mr. Mullendore, can you identify that document I've handed you? A. Yes, it's the second quarter report for 1982 of Transco Energy Company.

Q. And that is the company which owns Transcontinental Gas Pipe Line Corporation? [447] A. That's correct.

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[448] Q. Mr. Mullendore, yesterday in response to Mr. Stewart's examination you testified that there was a reduction in your market in May of 1982; do you recall that testimony? A. That is correct.

Q. But, in fact, for the second quarter of 1982, which was the months of April, May and June, there was a five percent increase in total gas sales by Transco as opposed to the second quarter of 1981, yes, or no? A. As I have stated, I don't have those figures in mind.

Q. If you could look on the fifth page of the second quarter report I have handed you, and if you would read

the first sentence in the second column. A. (Reading) "Transcontinental Gas Pipe Line's gas sales during the second quarter of 1982 were 236 billion cubic feet (BCF) compared with 225 BCF for the second quarter of 1981, an increase of five percent."

Q. That gas, in your testimony yesterday you said that the gas Transco buys is either used or store, is that correct? A. That is correct.

Q. What was done with the gas during the second quarter of 1982; was it used or stored, or used and stored? A. It was used and stored.

Q. And the storage facility if capable of holding 160 billion cubic feet of gas, isn't it? [449] A. That's correct.

Q. And that facility was at a record low at the end of the 1981-1982 winter season, wasn't it? A. No. I don't believe so.

Q. You don't believe what? A. I don't believe that it was at a record low.

Q. It was at a low of 40 percent of capacity at the end of the 1981-1982 winter season, wasn't it? A. I really don't know.

Q. Well, if you would turn back to the first quarter report and look on the fourth page. Do you have the fourth page? A. Yes.

Q. If you would look in the second colum and begin with the third sentence, please read that. A. Is that, "As a result . ."

Q. Yes, sir. A. (Reading) "As a result, total pipeline system gas storage was reduced from approximately 160 billion cubic feet at the beginning of the 1981-82 winter season to about 70 million cubic feet (40 percent of capacity) at the end of the period. Gas will be reinjected into storage during the summer months."

Q. And that's just what ya'll did; you injected gas in your storage system during the summer months, didn't you? A. We are injecting it.

Q. You are injecting it now? [450] A. Yes.

Q. It's not full, is it? A. It's about 88 percent full, Mr. Taylor. I think your question was "record low" and my recollection was that in the winter of 1976-77, at the end of that winter, our storage was substantially lower than 40 percent of our capacity.

Q. It was not a record low, but it was at 40 percent of capacity? A. Right.

Q. And it has taken quite a bit of gas to fill up your—reserve your storage facilities? A. Right. We would have liked to have seen the storage lower than that, because that permits us to buy more, or the customer to buy more, so that he can inject in to his storage capacity during the summer time those volumes.

Q. As of this date your storage facility is not full, is it? A. No, but you have to realize that if your storage capacity was at a 20 percent inventory level at this period of time, you would have been able to buy about another 15 or 16 billion cubic feet during the summer period. So, we like to see the inventory very, very low so that we can keep our purchases up in the summer time.

Q. I want to show you what has previously been introduced as Exhibit 8. It's a letter of June 17, 1982, on Getty Oil Company letterhead. If you will turn to the attached letter [451] of May 19, 1982, on Transco letterhead; do you see that? A. Yes.

Q. Would you read the second paragraph that appears on that page. A. (Reading) "Effective June 1, 1982, Transco will only take production attributable to the pro rata working interest of the above named signatory parties under the various Getty wells, and until further notice will

no longer take any gas being sold by the operator under the Operating Agreement."

Q. Now, would you read the next sentence? A. (Reading) "This action is being taken because volumes of gas which is currently available for delivery to Transco under its existing gas purchase agreement, substantially exceed the demand for gas in our market areas."

Q. Did Transco lose any markets during the second quarter of 1982, the three months ending June 30, 1982? A. Yes.

Q. What percentage of its market did it lose during the second quarter of 1982? A. I think I testified yesterday that we lost, according to the marketing department's survey, about 95 to 100 million cubic feet of gas daily.

Q. Which represents what percent? A. That would be about—and I equate it to an average daily flow—and that's about four or five percent of our average daily flow.

[452] Q. For your total market, or for a particular market? A. No, for the total market; total sales.

Q. Let me show you what was previously introduced as Exhibit 12, Mr. Mullendore. This is a letter of July 1, 1982, from Transco to the working interest owners in a number of wells, including the Sipp and the Rogers Well that we are here today on. Do you recognize this letter? A. Yes, sir.

Q. And I believe you saw it before it was actually sent out by Transco. A. Yes.

Q. Now, I believe in the letter of July 1, 1982, you are now offering to buy the gas—what we call the Operating Agreement gas, the gas of nonsignatory parties that you said you had no market for in your letter of May 19, 1982, is that correct? A. That is correct.

Q. Why did Transco have no market for the nonsignatory's parties gas on May 19, 1982, but suddenly had a

market for the gas on July 1, 1982? What changed? A. Nothing really changed. We met with some officials of Getty Oil Company. They reviewed the situation as they saw it as the result of our May 19, 1982 letter. They asked us if there was something that Transco could do to provide a market or transport the gas which belonged to the non-signatory parties. Those conversations, in my recollection, were on [453] two occasions.

Q. I'm asking you in the market place, Mr. Mullendore, what changed? A. Nothing. As a matter of fact, it got worse.

Q. The only thing that changed was the opportunity to buy gas for $5.00. A. Or transport it.

Q. Transco purchases gas from producers and resells for a profit, is that not correct? A. That's a—I don't want to quibble, but that is too simplicitious. We don't mark up gas. We don't buy for a nickel and sell it for eight cents.

Q. How do you make money? A. You make it on your rate base; on the investment that you make in rate base. We pass through only our—for purchase gas—only our actual cost. In general rate increases you don't make any mark up on natural gas. You make it on the allowed rate of return on your rate basis.

Q. Let me ask you this, Mr. Mullendore, your total gas sales were up in the second quarter of 1982, were they not? A. Right.

Q. And your average purchase price for MCF, that is the average price Transco paid per MCF to buy gas, was down over the first quarter of 1982, wasn't it? A. No. The average price, as a result of the March PGA had to have gone up, because purchase gas costs were up in [454] March.

Q. Would you refer to your quarter statement for the second quarter of 1982? A. All right.

Q. Now, what do you call the difference between your average purchase price per MCF and your average sales price per MCF? A. Well, the purchase price is simply the cost for the purchased gas.

Q. What do you call the difference in those two figures? A. I call them the transportation component in our rates; as the commission permits us to split out those costs between our demand and commodity portion of our rates.

Q. Let me—we may make some head-way, if you will look on page five of the quarterly report, the second report of 1982, you see it says Transcontinental Gas Pipe Line Corporation, and it's got some statistics there, right? A. Yes.

Q. And down under "Operations" it's got gas sales for the second quarter of 1982, 235.9 billion cubic feet, right? A. Yes.

Q. And it's got average sales price per MCF. A. Yes.

Q. And it says, $3.78? A. Right.

[455] Q. Now, that is the—what is the average sales price per MCF, is that what you are receiving in your resale of the gas? A. Yes, on an average among all three zones.

Q. Now, the next column says "Average Purchase Price Per MCF" doesn't it? A. Yes.

Q. Now, what does that mean? A. That's the average price that we pay the producer for the gas.

Q. And it says $3.13, right? A. Yes.

Q. Which is a 55 cents difference, is that right? A. Yes, that is correct.

Q. Now, the first quarter of 1982 your average sales price per MCF was not $3.78, was it? A. No, it was $3.80.

Q. Well, I believe if you will look at your own quarterly report for the first quarter of 1982, you will see it was

$3.52. If you would, refer to the first quarterly report. A. I'm sorry, I was looking at the——

Q. Well, look at the first quarterly report. Specifically, if you would look on page—on the fourth page it's got the same type of information there, doesn't it? A. Yes, I've got it now.

[456] Q. Now, for the first quarter of 1982, your average sales price per MCF was $3.52, right? A. That's what it says.

Q. And your average purchase price per MCF was $3.16? A. That's correct.

Q. Which was a difference of 36 cents, right?

BY CHAIRMAN FANCHER:

Mr. Taylor, I'm not going to stop you, but Mr. Stewart has a continuing objection to all of this testimony.

BY MR. TAYLOR:

Yes, sir, I understand.

BY CHAIRMAN FANCHER:

You objected yesterday to his attempt to the introduction of evidence with reference to price.

BY MR. TAYLOR:

Mr. Chairman, the purpose of this is simply to rebut the tail of woe of Transco.

BY CHAIRMAN FANCHER:

All right, sir. Let me ask Mr. Mullendore one question. You keep on referring to PGA, are you talking about the Professional Golf Association? (Laughter) Or do you want to identify that term for the record?

BY MR. MULLENDORE:

I'm sorry, Mr. Chairman, I get caught up in the vernacular of the FERC—Purchase Gas Adjustment is a term which is used at the FERC with specific reference to their rules which provide [457] for the flow through of purchased gas costs. I abbreviate it and call it PGA; Purchase Gas Adjustment. It's like on your electric bill, Fuel Adjustment Cost.

BY CHAIRMAN FANCHER:

Okay. I know what that is. Thank you. I just thought the record ought to be clear on that.

Q. (Mr. Taylor) Mr. Mullendore, getting back to your first and second quarter of 1982 report; for the first quarter of 1982, Transco's average purchase price per MCF was $3.16, is that correct? A. That's what it indicates, yes.

Q. For the second quarter it was $3.13, right? A. Right.

Q. Meaning that your average cost to buy gas from producers was down? A. That's what this would indicate, yes.

Q. And for the first quarter of 1982, your average sales price per MCF was $3.52, right? A. Yes.

Q. But for the second quarter your average sales price per MCF was $3.78? A. Yes.

Q. Meaning that the sales price was up but your acquisition price was down in the second quarter of 1982; yes, or no? A. That's what this would indicate, but it's not [458] quite that simple.

Q. I will let Mr. Stewart complicate that in his redirect.

BY MR. STEWART:

I would like the witness to be able to explain his answer to the question, Mr. Chairman.

BY CHAIRMAN FANCHER:

Let him explain in, Mr. Taylor.

BY MR. TAYLOR:

Yes, sir.

A. (The witness) My recollection is that we have—in our purchase gas adjustment filing there is called a deferred account. When producers file for, say, 107 certification with the board, and that is certified to the FERC, during the pendency of that all that the NGPA would admit to be paid, as to my recollection, the same as the 102 price. Then after the certification, the producer can go back and pick up from the date that he files for his well determinations, the difference in price. It may very well be that that had an impact, the deferred adjustment clause had an impact on what the purchase gas costs were recorded on the books from the first quarter to the second quarter. I know that there was about an 18 cent adjustment in purchase gas costs from the first quarter to the second quarter as a result of filing the purchase gas filing or PGA with the FERC. That 18 cent differential, because of the action of the deferred account as flowing through to resale [459] rates has been eliminated effective September 1. So, as of September 1, of this year, there is another 18 cent increase on resale rates solely through the action of the deferred account. I'm not familiar with how they actually keep the books and records and report on this. I'm simply saying that that is a very possible reason for the differential.

Q. Possible reason? You don't really know, do you? What you are telling the Board—— A. Well, I'm trying to explain to the Board. I'm trying to give some understanding here.

Q. Well, let's give some understanding to your figures. What this tell me is that in the first quarter of 1982 the

difference between your average cost to buy gas and the average price to sell gas was 36 cents in your favor, so to speak.

BY CHAIRMAN FANCHER:

Mr. Taylor, I'm sorry, but I'm just not going to let you ask him another question about prices. Let's get back to Rule 48, please. Can you do that?

Q. (Mr. Taylor) Mr. Mullendore, during the second quarter of 1982, when you experienced this 65 cent difference between your purchase and sales price was during the period when Transco was buying Coastal Exploration, Inc.'s gas from the wells in question on the same terms and conditions as it was buying the operator's gas, was it not? A. We were buying gas delivered to us by Getty. If [460] Coastal's gas was delivered by Getty to us in the volumes we were paying Getty for under their contract, then the answer to your question is, yes. But I have, no, you know, no independent knowledge that it belonged to Coastal, or who Coastal was at that time. It was being delivered by Getty.

Q. You knew that at least prior to July 1, 1982, that Getty was delivering and Transco was purchasing the gas of nonsignatory parties to Transco contracts, you know that, didn't you, Mr. Mullendore? A. I knew that they were delivering some gas that was in excess of their share under the contract. Who it belonged to, as your question was directed specifically to Coastal, I had no knowledge that it was Coastal's gas.

Q. My follow-up question was not that you knew it was Coastal's, but you knew that Transco was purchasing gas of nonsignatory parties, whoever they might be. A. Yes, unless there was a balancing arrangement of some type.

Q. Now, you testified yesterday in response to Mr. Stewart's questions, and correct me if I'm wrong, that it was not the custom and the practice to enter into contracts

which included the purchase of nonsignatory party gas or operating agreement gas, do you recall that testimony? A. I gave my opinion that it was not.

Q. And what was your opinion? A. That it was not customary.

[461] Q. That it was not customary to buy operating agreement gas under a contract? In other words, I'm trying to get the correct statement of what your opinion was.

BY MR. STEWART:

Mr. Chairman, the question as phrased incorrectly stated the question that Mr. Mullendore answered on direct.

Q. (Mr. Taylor) Mr. Mullendore, will you restate what your opinion was yesterday in response to the custom and usage question that Mr. Stewart put to you? A. It was not customary, in my opinion, to include nonsignatory gas insofar as contract minimums were concerned, I believe was the question.

Q. But that has not been true in Transco's experience in buying gas from the pool in question, has it? A. If you are making reference to other contracts in which we specifically agreed to take those as a part of the contract negotiation, there are certain contracts that we entered into that provided we would do so.

Q. There are at least 10 contracts with 10 different producers producing gas from the common pool that Transco entered into agreeing to buy gas other than the signatory parties gas. A. I don't know the number, but I said there are some other contracts.

Q. Do I need to let you go through the contracts, or do you agree?

[462] BY CHAIRMAN FANCHER:

No, sir, Mr. Taylor, let's don't do that.

A. (The witness) I agreed, Mr. Taylor, there are some other contracts. You put the number 10 on them, that is your number. I didn't count them. That's all I'm saying.

BY CHAIRMAN FANCHER:

Rule 48 doesn't say anything about whether or not the gas is under contract or not. It just says it shall be ratably taken and on a nondiscriminatory basis.

Q. (Mr. Taylor) Mr. Mullendore, the point is that Transco has not followed what claim is the custom and practice in contracting—in purchasing gas from this common pool. Transco has entered into contract under which it agrees to purchase Operating Agreement gas. A. I think I said yes to that; that we had entered into contracts.

Q. Are you familiar with the rules and regulations of this Board? A. No, I'm not.

Q. You are not at all familiar with the rules and regulations? A. No.

Q. You have been in the oil and gas business since 1958, and you have risen to the position you are in with Transco without ever having read and reviewed the rules and regulations of this Board? [463] A. I have not reviewed the rules and regulations of this Board.

Q. When entering into negotiations for gas contracts to buy gas in Mississippi, you had no knowledge of the rules and regulations of this Board? A. I have no knowledge of the rules and regulations, and specifically, Rule 48.

Q. Mr. Mullendore, at what point in time could an owner like Coastal owning a small undivided interest in these wells have been given what I call a Getty type contract, the same type contract Getty has covering these wells? At what point in time would Transco have given Coastal, with its interest, that type of contract? A. When the contract of Getty's was executed, and up to the time the market conditions changed.

Q. At what point in time was that? A. That was about mid May of this year. You are asking for a pinpoint in time, but somewhere before we determined that the market demand and the gas cost were such that we could no longer offer it.

Q. Now, Mr. Mullendore, you don't deny that it has been Transco's policy not to contract with owners of small undivided interests, but buy their gas through the operator's contract under the Operating Agreements in order to avoid the administrative burden of having to deal with the numerous owners of small undivided interests; that is a matter of policy that [464] Transco has followed, is it not? A. I'm not quite sure that I would agree with you. We don't have a policy of going out and seeking the names—I don't know how many people are involved, maybe 250 in this whole thing—of buying their gas. I don't believe that anyone who has, for instance, like Sabine, who has a small interest and who asked for a contract—I don't believe that we have ever turned them down of contracting for it specifically.

Q. Well, the point is that you testified that up to a point in mid May 1982, you would have given Coastal the same type contract Getty had, right? A. Yes.

Q. But the fact is, that in the Sabine contract you referred to, you gave Sabine that contract in December 1981, and they got $5.00, didn't they? A. Right.

Q. And they have got less than one percent in the Rogers Well. A. Right.

Q. Meaning that if it's that small, you get five bucks.

(No response)

Q. I have one more question for you. You would agree that in your opinion it is discriminatory for Transco to have purchased Coastal's gas on the same terms and conditions as it purchased the operator's gas, at least prior to

July 1, 1982, but then after that date to offer to purchase Coastal's gas [465] at the $5.00 price; is that discriminatory? A. No, I wouldn't agree with that. What is your definition of discriminatory?

Q. Is there a difference in those prices? A. There is a difference in the prices.

Q. There is a distinction in the prices. A. There is a difference in the prices.

BY MR. TAYLOR:

That's all the questions we have, Mr. Chairman.

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CROSS EXAMINATION

BY MR. TERRELL:

Q. Mr. Mullendore, you, of course, are familiar with Section 601-A of the NGPA? A. Yes.

[466] Q. And I believe—I just want to clarify that you stated that the first sale of gas produced from the well that is the subject of this petition is exempt from FERC jurisdiction by Section 601-A of the NGPA? A. The sale.

Q. The first sale, as defined in the Act. Did, when Transco inform the operators that it was purchasing only the signatory parties gas produced from the well, the subject of this petition, do you know if either Transco or the operator caused abandonment proceedings to be filed under the Natural Gas Act? A. Well, I have no knowledge, but I think I would know that—I assumed they served papers on Transco. I would assume they did not file for abandonment.

Q. Are abandonment proceedings necessary? A. For the producers?

Q. Correct. A. Well, that's a legal question. My answer would be probably no, insofar as the sale.

Q. As to the sale of the nonsignatory parties gas? A. Yes.

BY MR. TERRELL:

Thank you, sir.

BY MR. WATTERS:

No questions.

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[470] REDIRECT EXAMINATION

BY MR. STEWART:

Q. Mr. Mullendore, you responded that the first sales of this gas was not subject to jurisdiction of the FERC. Were Transco's purchases of this gas subject to the jurisdiction of the FERC? A. Yes, I think that if you will refer to Appendix B of the commission's order suspending Transco's PGA filing—purchase gas adjustment filing of that order, being dated February 28, 1981, you will note the items which Transco had to supply to the FERC concerning contracts between Transco and Suppliers of Section 107 gas, the geographic origin of such supplies, including well numbers, whether any wells were jointly owned and the name of the other sellers and the other buyers, volumes, pricing mechanism, maximum ceiling prices; not only with respect to those that we had assigned, but also with [471] respect to what we were negotiating for at the time. All that information was asked to be supplied—ordered to be supplied.

BY MR. TAYLOR:

Mr. Chairman, may the record reflect the petitioner, Coastal, has a continuing objection to this line of questioning?

BY CHAIRMAN FANCHER:

Yes, sir, the record may so reflect.

Q. (Mr. Stewart) Mr. Taylor also asked you to read out of the second quarter financial report, which was Exhibit 4, a statement concerning the position of Transco with regard to the effect of the PGA filings, again refer to the financial report for the first quarter of 1982, which would include the months of January, February and March of 1982, with regard to statements concerning the effect of the PGA filings on Transco Energy's financial position. When would the statement for the first quarter of 1982 normally come out? A. It would come out probably in April or May of 1982.

Q. At that time had discussions with the protestors of thos PGA filings been entered into with regard to resolutions by the memorandum of agreement?

BY CHAIRMAN FANCHER:

Mr. Stewart, I think we know that that was just done a few days ago, you know, but go ahead and let him answer the question. You asked him that yesterday.

A. We entered into, in my recollection—I can't really say whether it was before it came out or during the preparation, [472] or after it came out, Mr. Stewart. I know that depositions—my deposition was taken by the FERC staff, the North Carolina Commission and the New York Commission, I believe, in early April of 1982. Subsequent to that deposition, we entered into discussions with those commissions concerning the possible settlement of the issues in the PGA case. I can't pinpoint whether it was before, after or during, but I can say that from that point on until the consummation of the memorandum of understanding we had at least five, and perhaps more, across the table discussions with the respective commissions, and concern-

ing potential settlement of those issues. We had the lawyers involved, and that took an awful long time.

BY CHAIRMAN FANCHER:

I'll agree with that. Mr. Stewart, we keep on talking about commisions of North Carolina and the commission of New York. I would like for the witness to identify those commissions and their jurisdiction. Are they regulatory commissions on the production of oil and gas, or are they similar to the Mississippi Public Service Commission which regulates price? I don't know why Mr. Taylor didn't do that, but I would just like to know.

A. (The witness) The Public Service Commission of the State of New York and the North Carolina Utilities Commission regulate our distributor customers resale and operations of their distribution systems.

BY CHAIRMAN FANCHER:

So, they deal directly with distribution and price at a retail or a whole level, not with production?

[473] A. To my knowledge there is no production of oil or gas in the state of North Carolina. With respect to the New York Commission, Mr. Chairman, I can't tell you whether they regulate that production aspect of it or not.

BY CHAIRMAN FANCHER:

Okay. If you don't know, you don't know.

A. Well, I don't know.

BY CHAIRMAN FANCHER:

Well, that's good enough.

A. But I do know that they are charged—like I suppose the Public Service Commission of the State of Mississippi, whatever their term is, with regulating their rates and protection of the consumer.

BY CHAIRMAN FANCHER:

They are not doing a very good job of it. Go ahead.

Q. (Mr. Stewart) Mr. Mullendore, you indicated that gas is currently being injected into storage capacities of Transco and that Transco has at present already stored up to 88 percent of its storage capacity? A. That's the latest figure I have, Mr. Stewart.

Q. When is it projected that the storage capacity will be completely full? A. Out Oakford storage is full, without the exception of perhaps, two weekends of injection. You have to realize that as storages fill up, pressures increase. The injecting capability as pressures within the reservoir increase, the [474] ability to force the gas down into the completed reservoirs, likewise, decrease. We currently estimate that based on customers nominations into storage and our storage will be filled probably by the middle of October, if not sooner. That depends on market; it depends on ability to inject everything that the customer asks to be injected. I have not checked the operations aspect of where they are with injection capability or anything like that. I do know that because of the fringe months, and I'm talking about the months of September and October, that we will get occasional cold snaps where the customers will call for their gas out of storage. They can inject or withdraw out of storage on a daily basis.

Q. Is Transco currently producing all of the gas that it is contractually required to produce even though it still has some storage capacity? A. We are not purchasing all of the gas that we are contractually authorized or obligated to purchase.

Q. What will happen to your daily take of gas when your storage capacity is at 100 percent? A. They will be reduced.

Q. Mr. Taylor asked whether or not Transco buys gas and then resells it for a profit.

BY CHAIRMAN FANCHER:

If they didn't do that, Mr. Stewart, they would go out of business, you know.

BY MR. TAYLOR:

May the record continue to reflect that the [475] petitioner, Coastal, objects to this line of questioning?

BY CHAIRMAN FANCHER:

Yes, sir.

Q. (Mr. Stewart) Is Transco's return on its investment regulated? A. Yes.

Q. Who is it regulated by? A. By the FERC.

Q. To what extent is it regulated? A. It's totally regulated.

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Excerpts from the Mississippi State Oil and Gas Board order establishing gas allowables for April 1, 1982 to October 1, 1982

MISSISSIPPI STATE OIL AND GAS BOARD
JACKSON, MISSISSIPPI

In Re: Docket Number 29-82
Order Number 163-82

GAS ALLOWABLES FOR APRIL 1, 1982, TO OCTOBER 1, 1982

This day there came on for hearing before the State Oil and Gas Board Docket Number 29-82 concerning the fixing of the gas allowables in the hereinbelow listed fields in accordance with Statewide Rules, and the State Oil and Gas Board finding that due, proper and legal notice of the hearing of said docket at this meeting has been given in the manner, way form and within the time provided by law and prescribed by rules and regulations of this board and that due and sufficient proofs of publication are on file being duly advised in the premises and the Board finds that the gas allowables should be set for the months of April 1, 1982, to October 1, 1982, for the purpose of preventing waste and for the protection of correlative and coequal rights of the owners in the gas pools in said fields.

IT IS THEREFORE HEREBY ORDERED BY the State Oil and Gas Board that the gas allowables for the hereinbelow fields be and the same are hereby set for the months of April 1, 1982, to October 1, 1982, and said allowables are allocated among the producing wells in said fields as follows:

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HOSSTON-HARPER GAS POOL
ALLOWABLES FOR APRIL 1, 1982, TO
OCTOBER 1, 1982 – 44,914 MCF/DAY
ALLOCATION FACTOR – 7.80 MCF/ACRE

COMPANY AND WELL	WELL NO.	ASSIGNED ACREAGE	DELIVER-ABILITY (FORM 4-A)	DAILY ALLOWABLE MCF
GETTY OIL COMPANY				
Rogers 28-11	1	640	7,100	7,100
Sipp 20-9	1	640	4,100	4,100
HARKINS & COMPANY ET AL				
Bd. of Sup. UN 16-11	2	640	5,044	5,044
Barnes Unit 9-10	1	640	5,013	5,013
Fortenberry UN 10-11	1	640	5,015	5,015
Tolar Unit 15-6	1-LT	640	5,013	5,013
Dale Unit 17-8	1	640	5,080	5,080
Dale Unit 8-10	1	640	5,049	5,049
TOMLINSON INTERESTS, INC.				
J. C. Williamson et al	1	640	3,500	3,500
TOTAL				44,914

EAST MORGANTOWN FIELD
HARPER GAS POOL
ALLOWABLES FOR APRIL 1, 1982, TO
OCTOBER 1, 1982 – 28,250 MCF/DAY
ALLOCATION FACTOR – 6.30 MCF/ACRE

COMPANY AND WELL	WELL NO.	ASSIGNED ACREAGE	DELIVER-ABILITY (FORM 4-A)	DAILY ALLOWABLE MCF
GETTY OIL COMPANY				
F. W. Buckley 33-6	1-U	640	3,550	3,550
W. Morgan 9-14	1	640	4,800	4,800
TOMLINSON INTERESTS, INC.				
Board of Education	1-UT	640	5,000	5,000
H. L. Beacham	1	640	5,000	5,000
Clinton V. Morgan	1	640	5,000	5,000
Pitard & Probil	1	640	3,000	3,000
Mrs. Leona W. Fortenberry	1	640	4,600	4,600
TOTAL				28,250